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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1677th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 July 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. BHAGWATI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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GE.98-16929 (E)

The meeting was called to order at 10.05

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Israel (continued) (CCPR/C/81/Add.13)

1. At the invitation of the Chairperson, Mr. Lamdan, Mr. Schoffman, Mr. Galilee, Mr. Bardenstein and Mr. Blass (Israel) took places at the Committee table.

2. Mr. BUERGENTHAL said that daily life in Israel presented the dichotomy of, on the one hand, a vibrant democracy and open society with a highly developed legal system and, on the other, a state of emergency resulting from the Arab-Israeli conflict with all the suffering, abuses and discrimination that such a situation inevitably entailed. The country had clearly attempted to strike a balance between the need to protect human rights and the need to confront terrorism but, as the delegation itself would probably admit, the attempt had not always proved successful.

3. While it could be argued that administrative detention in a state of emergency was not necessarily incompatible with the Covenant, there was a risk, when such detention was extended indefinitely or routinely, that it would supplant due legal process and come to be viewed by the authorities as a means of avoiding a proper trial. Lengthy administration detention was difficult to justify in all but the rarest of cases.

4. He had long been troubled by the destruction of the family homes of individuals who had committed serious terrorist acts, a form of punishment inherited from the time of the United Kingdom Mandate. Although only a small number of houses had been destroyed in recent years, it was nevertheless a form of collective punishment and a barbaric practice that could never be justified.

5. He was also concerned about interrogation methods involving physical pressure. The choice between saving lives and protecting the integrity of prisoners admittedly presented the authorities with an insoluble dilemma but, even if the argument that some moderate physical pressure was not torture was accepted, the risk of its becoming torture in the hands of eager investigators was highly likely and probably unavoidable.

6. While open discussion of government human rights violations was inconceivable in many countries, such issues were freely and vigorously debated in Israel, which had made dramatic progress in protecting human rights under very difficult circumstances. He trusted that the current dialogue would contribute to the ongoing debate on how to balance the need to protect human rights with the need to confront deadly terrorism.

7. Mr. SCHEININ said he noted that the delegation had confirmed the existence of such methods of pressure as violent shaking, restraining in painful positions (which he gathered was equivalent to handcuffing), hooding

and sleep deprivation. The practice of shaking, in particular, had entailed very serious consequences, including brain damage and the death of one detainee. Was there any possibility of that method being abolished?

8. He questioned the logic behind the argument used to justify keeping the full list of methods secret, namely that it should not be allowed to fall into the hands of terrorist organizations. As it seemed clear that such organizations were best placed to know exactly which methods were applied, he maintained his request for a full list. The Committee's function of monitoring compliance with the non-derogable provisions of article 7 of the Covenant was impeded by the secrecy issue and it was obliged to make its assessment on the basis of the delegation's confirmation of the use of certain methods and information from reliable sources on the use of other methods.

9. He asked whether the Israeli Government would consider ratifying the Optional Protocol to the Covenant or making the declaration under article 21 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment so that individuals could file complaints as part of a confidential procedure. Although the Committee had recently amended its rules of procedure to relax the requirement of confidentiality of documentation, individual States parties were entitled to request that confidentiality be maintained.

10. Turning to the question in the list of issues concerning the Supreme Court ruling of 13 November 1997 on Administrative Appeal 10/94, he said he noted that a majority of the Supreme Court panel had taken the view that the holding of persons in administrative detention for the purpose of assisting the authorities in negotiations for the release of Israeli prisoners of war was lawful for reasons of State security. The detention of such persons was thus linked to circumstances beyond their control and unrelated to their conduct.

11. He shared Mr. Pocar's concern about Israel's declaration regarding the existence of a state of emergency and its related derogation from article 9 of the Covenant, particularly in the light of paragraph 8 of the Committee's General Comment No. 24 on reservations, which stated that a general reservation to the right to a fair trial was unacceptable. Certain elements of article 9 were non-derogable although it was not mentioned in the list contained in article 4, paragraph 2. The principle of the prohibition of arbitrary detention and the requirement for effective judicial review could be viewed as non-derogable under customary international law. The Committee had ruled in the recent A v. Australia case that prolonged administrative detention in a situation where the possibility of judicial review was so limited that it failed to provide effective control was a violation of article 9, paragraphs 1 and 4.

12. The case of a person who was detained merely as a "bargaining chip" in negotiations between two States certainly fell into that category. According to paragraph 12 of the Supreme Court ruling, when detention occurred under circumstances in which the detainee served as a "bargaining chip", it constituted grave prejudice to human dignity inasmuch as the detainee was

perceived as a means for the attainment of an objective and not as an objective in and of himself. That statement raised issues under articles 7 and 16, both of which were non-derogable.

13. The delegation claimed that the Supreme Court ruling "spoke for itself" and called for no further comment. In fact, however, it raised a serious issue regarding the status of the Covenant in internal Israeli law. The ruling indicated that international law did not enjoy superior status within municipal law, so that the statement in paragraph 42 of the report that the Covenant was protected by internal legislation or case law was not true in all cases.

14. Ms. EVATT said she understood that rubber bullets could be used under the regulations to disperse violent and non-violent demonstrations, but not at a range of less than 40 yards or where children were in the line of fire. Yet it was reported that 53 people, including 11 children under 13 years of age, had been killed by such bullets over the past 10 years and that 5 children under the age of 16, including eight-year-old Ali Mohammad Jawarish, had been killed in 1997. She wished to know, therefore, how the prohibitions were enforced and what action was taken to punish those responsible and to prevent further misuse of such methods.

15. Turning to paragraph 15 of the list of issues, she said that there was nothing in paragraphs 195 to 197 of the report that would lead one to suspect that a person such as Mordechai Vanunu could be held for as long as 11 years in segregation. She asked whether any others had been held for such lengthy periods and how that kind of detention could be justified under articles 7 and 10 of the Covenant.

16. The delegation of Israel had described various support mechanisms for women that were victims of trafficking agencies but the media asserted that the women concerned were detained and deported if discovered by the authorities. She asked whether there was no mechanism that would allow them to remain in Israel for a certain period in order to file a petition for compensation.

17. Although Israel asserted that it had no control over Lebanese prisoners in Khiam prison, she understood that, when the body of a member of the Israel Defence Forces had recently been returned to Israel, 10 innocent Lebanese nationals held in Israel had been released together with 40 prisoners held in Khiam prison. That suggested to her that Israel exercised some form of control in the area.

18. The sheer numbers of people who had been subjected to the methods of pressure used by the General Security Service indicated that their use extended far beyond what was envisaged in terms of the so-called "ticking bomb". It seemed unlikely that there could be so many bombs ticking away for weeks at a time, but only from Monday to Friday.

19. Mr. LALLAH, having associated himself with the questions asked by Mr. Buergenthal and with Mr. Scheinin's argument concerning administrative detention and methods of interrogation, asked whether the Government of Israel intended to introduce an amendment to the Prevention of Terrorism Ordinance

that was identical with section 9 of the General Security Service Bill, a section that had been omitted before the bill's submission to the Knesset, the effect of which would be to legitimize current interrogation methods that were incompatible with the Covenant.

20. Mr. ZAKHIA said that, pursuant to the Fourth Geneva Convention and in the virtually unanimous opinion of international bodies, an occupying Power bore full responsibility for protecting the human rights recognized in the Covenant in the territories it occupied. Israel, which exercised de facto control in the occupied part of Lebanon, remained indifferent to or even encouraged violations of articles 2, 7, 9 and 14 in Khiam prison, where dozens of people had been detained for years without charge or trial.

21. They had no access to lawyers and, according to a statement by General Lahad, family visits and visits by the International Committee of the Red Cross (ICRC) had been suspended at the request of the Israeli authorities since September 1997. Israel's responsibility had been recognized by the European Parliament in a resolution adopted on 23 October 1997 and by the Commission on Human Rights in its resolution 1997/55 which called on Israel to release all detainees in Khiam detention centre immediately and to allow visits by the ICRC.

22. Mr. PRADO VALLEJO said that the Committee had received reports of systematic violations of human rights by the Israel Defence Forces in the occupied territories, including torture and extrajudicial killings. The State party was obliged under the Covenant to investigate those reports, to compensate the victims and to bring the perpetrators to justice. The Government of Israel should submit a supplementary report to the Committee on the implementation of the Covenant in the occupied territories.

23. Mr. BHAGWATI asked the delegation of Israel to comment on the reports of over 1,200 extrajudicial killings in recent years, including 247 of children under 17 years of age. He wished to know what steps had been taken to eliminate such atrocities and to compensate the victims.

24. Mr. LAMDAN (Israel) said that Israel was not an occupying Power in southern Lebanon. For the past 15 years, towns in northern Israel had been exposed to ongoing attacks and bombardment by Hezbollah forces based in southern Lebanon. Israeli forces were present in the area purely for purposes of self-defence and because, the Government of Lebanon had been unable to exercise full control over its sovereign territory. Israel had no effective control or jurisdiction over the people of southern Lebanon. Such control was exercised by General Lahad, the head of the Southern Lebanese Army, who was responsible for the prisons in the area. He was, however, also responsive to Israeli requests - hence the apparent paradox referred to by Ms. Evatt.

25. Israel had accepted Security Council resolution 425 (1978) and was ready to negotiate terms for the removal of its soldiers from southern Lebanon. That was not a resolution which called for unilateral action nor was it self-implementing. It required talks between the sides to guarantee that Israel would not continue to suffer attacks from southern Lebanon.

26. Prisoners at Khiam were visited regularly by ICRC representatives. There had recently been a lapse of several months pending the return by the Lebanese Government of the remains of an Israeli soldier killed in Lebanon, but visits had been resumed in recent weeks.

27. Mr. SCHOFFMAN (Israel) said that Israel was troubled by the dichotomy mentioned by Mr. Buergenthal which was contrary to the interests of both Palestinians and Israelis. As more powers were transferred to the Palestinian Authority, some of the security problems and legal and human rights issues in the occupied territories would be resolved. The minimum standards provided for in the Geneva Convention had been raised in the occupied territories in order to bring them somewhat more into line with those prevailing in Israel.

28. In Israel itself, administrative detention was not used as a means of avoiding due legal process and there were no Israelis in administrative detention. A criminal trial was not an option in the case of the Lebanese detainees referred to in the Supreme Court ruling. In the occupied territories, the security situation had recently become more difficult for Israel because of the virtual impossibility of obtaining intelligence in areas controlled by the Palestinian Authority. The need to protect sources was therefore all the greater, but the number of administrative detainees had nevertheless declined to 86.

29. Mr. Scheinin's request for ratification of the Optional Protocol would be conveyed to the competent Israeli authorities. However, remedies already existed within the Israeli legal system, including on the matter of interrogations.

30. Concerning the Supreme Court ruling on Lebanese prisoners, there was very little he could add to the arguments adduced by the Court. The case was currently under review, and he understood it was to receive a further hearing before an expanded bench.

31. In response to the question asked by Mr. Lallah, he said the General Security Service Bill had not yet been enacted. However, the question of the special interrogation methods used by the GSS was currently under discussion in the Attorney-General's Office, although no final decision had yet been reached. Israel's dilemma was that, if such a law was enacted, it was likely to be seen as legalizing torture, despite the fact that it stated specifically that no interrogation methods which constituted torture or cruel, inhuman or degrading treatment could be used. Although from the legal viewpoint the new law would in fact give more protection to the individual, from the public relations viewpoint it unfortunately gave a bad impression. That dilemma had still not been resolved.

32. In reply to Mr. Prado Vallejo's question, he recalled that he had explained the previous day that, as far as the occupied territories were concerned, Israel had committed itself to the humanitarian principles enshrined in the Geneva Conventions. The Covenant and the Geneva Conventions gave different answers to the same questions, and it was therefore not possible to apply the provisions of both instruments. As he had stated earlier, Israel had introduced various safeguards to protect human rights in the territories.

33. Mr. BLASS (Israel), replying to the point raised by Mr. Scheinin, said he had not intended to imply that painful methods of restraint were authorized in Israel. In fact, handcuffing techniques had been recently changed so as not to cause pain to the person detained. In the case of the detainee who had died after having been subjected to shaking, the pathologist's report had revealed a number of other very specific factors which could also have contributed to the death. The case was thus in no way typical.

34. In reply to the question as to why interrogation methods were kept secret, he said that different methods were used in different cases, and secrecy assisted the security services when carrying out interrogations. Concerning the point raised by Ms. Evatt, there were specific guidelines governing the use of rubber bullets by the military. They could not be used in peaceful demonstrations, but only in situations where the lives of soldiers were being endangered by the use of weapons such as Molotov cocktails or slingshots. In cases where the guidelines were violated, there would be an investigation, which could lead to the prosecution of those responsible. Victims were entitled to sue for compensation in the civil courts.

35. Replying to Mr. Bhagwati, he said that there were no extrajudicial executions in Israel. The figures he had quoted referred to persons killed over a period of 10 years in the course of riots which had endangered the lives of soldiers.

36. Mr. LAMDAN (Israel) said that he had taken note of the concerns raised by Mr. Scheinin concerning Israel's reservation in respect of article 9, and would ensure that they were transmitted to the appropriate authorities for consideration.

37. Israel, like other countries, wished to eradicate the trafficking in women, and procurers had been indicted and sentenced for that offence. Israel would certainly not stand in the way of anyone wishing to press charges in that respect or to seek civil remedies in the courts. He was not aware of any case in which a person had specifically asked to remain in the country in order to be entitled to seek legal remedies: in fact it was not necessary to be physically present in the country in order to press a claim for civil damages.

38. Mr. Bhagwati Vice-Chairperson, took the Chair.

39. Mr. BLASS (Israel), replying to Ms. Evatts question on the isolation of prisoners, said that the Vanunu case was a special one in that his continued refusal to refrain from passing on State secrets constituted a threat to national security. However, he was no longer held in segregation. Isolation of prisoners was resorted to only in very rare cases, e.g. to protect other prisoners from violence.

40. Citizens and residents of Israel, including the residents of East Jerusalem, had complete freedom of movement within the country and were also entitled to enter the West Bank. They had however, to obtain a special permit in order to enter the Palestinian part of the Gaza Strip. Palestinians

likewise required a special permit to enter Israel or to move from one area to another, so that security checks could be made: some 50,000 Palestinians crossed the border daily to work in Israel.

41. Israel was aware of the difficulties caused by those restrictions and had made special arrangements to facilitate the movement of persons and goods. Palestinian traders were given special entry permits, as were Palestinians studying in Israeli schools and colleges or receiving treatment in Israeli hospitals, as well as the relatives of Palestinian prisoners held in Israeli prisons.

42. Mr. LAMDAN (Israel) pointed out that there was no presumption of a right to freedom of movement into or out of Israel. Israel was a sovereign State, and was entitled to regulate the movement of persons across its borders in the same way as other countries. It was true that there were currently some 50,000 Palestinians working in Israel, with official permits, but a recent report by the International Labour Organization (ILO) indicated that there were at least another 50,000 working there without permits.

43. Mr. SCHOFFMAN (Israel) said that, while citizenship accompanied a person wherever he went, residency was a de facto situation. Persons living in Jerusalem at the time of the 1967 census had been considered residents of Israel, and given the opportunity to apply for citizenship. For those who had done so, the situation was exactly the same as that of any other Israeli citizen. The number of revocations of residency permits in Jerusalem had indeed increased since 1991, and particularly from 1995. Before that, there had been no routine checks on the place of domicile of Palestinian residents who had not obtained Israeli citizenship. Following those checks, a few hundred people had been denied residency status.

44. The case was a difficult one because of the unusual situation of the difference in status between Jerusalem and the neighbouring areas under the control of the Palestinian Authority, and it was currently before the Supreme Court awaiting solution. Residents of the occupied territories were registered with the Palestinian Authority, voted in Palestinian elections, and received services from the Authority. Children born to residents of Jerusalem obtained the status of their parents.

45. As was explained in the report, under the Law of Return Israeli citizenship was granted to Jews, their spouses, children and grandchildren. While Jews did not need to apply for naturalization, non-Jews seeking to be naturalized had to follow the procedures provided for under the Nationality Law, which were similar to those of other countries. Jews who preferred not to apply for Israeli citizenship would be granted permanent residency status, and would have the right to vote in national elections.

46. Some 97 per cent of the persons resident in the occupied territories were granted building permits by the Palestinian Authority, which was also responsible for the grant of housing loans and for the provision of social welfare.

47. On the question of deportation, he said that persons deported because they had entered Israel illegally had three days in which to appeal to the

Ministry of the Interior and, if that appeal were rejected, the right to appeal to the Supreme Court. In practice, the Court usually issued a temporary restraining order to enable the case to be heard before the deportation date. Deportation of residents or citizens of Israel was not permitted under Israeli law, but persons from the occupied territories could face deportation, although there had been no such cases since 1992. Persons under a deportation order had the right to appeal.

48. Mr. BARDENSTEIN (Israel) said that the destruction of houses as a counter-terrorist measure had been authorized by Regulation 119 of the Defence (Emergency) Regulations enacted under the United Kingdom Mandate. During the years of the intifada, Israel had been careful to restrict the use of the measure to cases where there was clear evidence that the occupier was involved in acts of violence endangering human life. Before a house was destroyed, its occupants were given the opportunity to appeal to the military authorities and, if that appeal were rejected, had the right to petition the Supreme Court. Only if the petition was rejected would the house be destroyed. He pointed out that the measure was often applied only to the room or apartment where the terrorist lived, and not to the entire house. The measure was resorted to in extreme cases only, and in fact had not been applied since 1997.

49. Mr. SCHOFFMAN (Israel) said that, in cases of administrative detention, evidence could not be revealed for the reasons he had explained earlier. Such cases required immediate review at a very high level, with an appeal to the Supreme Court. The evidence would be available to the judge, who could put questions to the government representative. In criminal trials, on the other hand, the court could not hear secret evidence, and convictions would not be based on such evidence.

50. The Public Defender's Office was a relatively new institution which would soon be in operation throughout the country. While it did not operate in the occupied territories, a resident of the territories on trial in Israel would be entitled to avail himself of its services.

51. Concerning the question in paragraph 27 of the final list of issues, he stated that homosexual activities had been decriminalized in Israel some years previously. Discrimination against homosexuals in the workplace was expressly prohibited under the Equal Employment Opportunities Law, and other forms of discrimination were prohibited under the Basic Law on Human Dignity and Liberty. The Supreme Court had ruled that a private employer could not deny benefits to homosexual partners. Homosexuals could serve in the army and be promoted to the most senior posts. In fact, Israel's policies in that respect were among the most liberal in the world.

52. Legislation on conversion was still in draft form, and discussions were continuing. In Israel, conversion to Judaism automatically conferred citizenship, and thus had to be governed by an authorized and recognized procedure overseen by the Rabbinical Courts. The proposed legislation would apply only to conversions within Israel.

53. The Government's programme to establish civil burial sites around the country was in the course of implementation, and one site was already in

operation. In addition to the sites planned under the programme, civil burials could also be carried out in kibbutzim and collective settlements, as had been the practice for many years.

54. Addressing the question in paragraph 29, he said that there were boards of trustees in five Israeli cities managing *wakf* properties, and arrangements were currently being made for those boards to be handed over to members of the Muslim community. Concerning the question in paragraph 30, he said that newspaper licences in the occupied territories were issued by the Palestinian Authority under the Interim Agreement.

55. Addressing paragraph 31 and the "special circumstances" under which a girl of 16 could marry, he said that the expression generally meant that the girl was pregnant. As for the age from which men could marry under the various religious laws, he said that it was 13 years of age under Jewish law, but child marriages for males were unusual. He had been informed that, under Muslim (Ottoman) law, men could marry as from 18 years of age but that, under the Sharia, men could marry as early as age 12 with the approval of the religious court (Kadi). That, too, was very unusual. The prohibition of child marriages was enforced in all communities by the religious courts and the official religious functionaries.

56. Regarding the performance of illegal marriage ceremonies within the religious communities, he said it was quite possible that they occurred, but they were not condoned by the State or by the religious courts. As to whether international standards on the age of majority were being taken into account in the review of the minimum marriageable age for men and women, he said that the proposal currently before the Knesset simply stated that the same standards would be applied to men and women alike. Since the Committee had raised the issue, however, he would alert the authorities to the need to take those standards into account. On the question whether marriages performed without the consent of the woman were recognized as valid, he said the proxy marriages permitted under Sharia law were voidable if a woman or her representative requested such annulment before the Sharia court.

57. In connection with the question in paragraph 32, he recalled Israel's reservation to the Covenant in connection with personal status and the competence of the religious courts. The secular legislature had attempted to intervene in certain matters, such as the practice whereby a Jewish woman was prohibited from remarrying if her husband did not accord her a divorce. Women sometimes waited years and years and religious courts scoured the globe for husbands who had disappeared without freeing their wives to remarry.

58. Recalcitrant husbands could be imprisoned or denied certain privileges and rights by the religious court pending their acquiescence to a divorce. That certainly raised issues concerning the husband's rights but, on the other hand, liberation from all restrictions was entirely within his control: he had only to consent to the divorce. The process could also operate in the opposite direction: a woman could be imprisoned for refusing to accept a divorce.

59. Concerning the question in paragraph 33 and discrimination against men and women who did not belong to a religious group, he said a bill to permit

marriage between such people was currently before the Knesset. As things stood, such people resorted to marriage outside the country and the subsequent registration of the marriage by the Ministry of the Interior. Proxy marriages were also performed in countries that allowed the procedure. People who did not wish to marry under religious law could also enter into a prenuptial contract, following which their benefits from the State would to all intents and purposes be the same as those of married couples.

60. The attitude of the religious courts to the remarriage of persons married or divorced overseas depended on a great many complex factors including the nature of the marriage or divorce and the rules of the specific religious court involved. The effect of marriages not recognized under religious law on the rights of the children also varied. In Judaism, the children of unmarried parents were not deemed illegitimate: they enjoyed exactly the same rights as children of conjugal unions. Under Sharia law, a child of unmarried parents was considered the child of the mother and had a looser legal relationship with the father. A sort of civil fathership had, however, evolved under Israeli law to ensure that a man who, under religious law did not have to provide for his child, would actually do so. He had no information on the approach used by the various Christian religious courts.

61. Concerning the residence and citizenship rights of foreign non-Jewish spouses, he said that the Ministry of the Interior's current policy - which was being challenged in the courts by individuals and NGOs - was that there was no difference between Jewish and non-Jewish Israeli citizens in respect of the status of non-Jewish spouses. Such spouses did not qualify for citizenship rights under the Law of Return, but they could apply for temporary residence permits and, in time, acquire permanent resident status or be naturalized. The petition currently before the courts would give the non-Jewish spouse of a Jew the right to claim Israeli citizenship under the Law of Return.

62. As for the residence rights and procedures applied to the spouse of an Israeli citizen from the occupied territories, the laws were the same as for foreign spouses of Jewish citizens - initially residence and work permits were accorded, with naturalization being granted subsequently. There was invariably a security check, however, on anyone from the occupied territories who applied to reside in Israel. On the registration of Arab-Israeli children, he pointed out that children inherited the citizenship status of their parents: identical procedures applied to both Arab and Jewish citizens of Israel. Permanent residency status was accorded to children of Israeli Arabs and Jews on the same basis: that of the de facto residence of the parents in Israel.

63. Referring to the question in paragraph 35, he said that all citizens and residents domiciled in Israel were covered by the National Insurance Institute (NII). The responsibility for social welfare having been passed to the Palestinian Authority in the occupied territories, there was no coverage by the NII there. People who came to work in Israel, from the occupied territories or elsewhere, received certain benefits from the NII such as disability compensation, protection against the bankruptcy of the employer and

birth benefits if the wife gave birth in Israel. Children of foreign workers did not normally receive benefits from the NII, but they were educated in State-funded schools.

64. Ms. Chanet resumed the Chair.

65. Mr. BARDENSTEIN (Israel) said, with reference to paragraph 36, that racially motivated violence was unfortunately a part of life in Israel. It was an outgrowth of the conflict and the fear and mistrust it had engendered. The response to such violence had to take place at all levels, from individual parents encouraging their children to play with children of other races to institutional arrangements and negotiated agreements.

66. Many programmes were in place in the areas of education and public information. The civics curriculum for high school students in State schools covered tolerance, democratic values and human rights. A report commissioned two years previously had recommended the expansion of all educational devices, not just instruction in schools, to inculcate those values. Several initiatives had been taken to implement those recommendations, including the staging of meetings between pupils in Arab and Jewish high schools with the objective of breaking down emotional and psychological barriers and encouraging interaction. A number of programmes were likewise being implemented outside the State school system by NGOs. Only educational, social and diplomatic solutions would eradicate or attenuate the phenomenon of racist violence.

67. The CHAIRPERSON invited the members of the Committee to ask any supplementary questions they might have on the last part of the final list of issues.

68. Ms. EVATT said she had been given to understand that, in order to acquire the right to reside in the occupied territories, an Arab Israeli woman who married a resident of the territories had to sign a form relinquishing her Israeli citizenship. She was thereby prevented from returning to Israel and was rendered stateless. Did the same rule apply to Jews who married and went to live in the occupied territories?

69. She would also like clarification about the status of Palestinian children born in East Jerusalem who had one parent from the West Bank. As she understood it, even if the other parent was a long-time resident of East Jerusalem, the child could not be registered there and had no right to receive health insurance.

70. On family reunion, she had heard that, particularly in respect of documentation required and waiting periods imposed, it was much easier for the foreign spouse of a Jewish citizen to gain permanent residence status and citizenship rights in Israel than for the foreign spouse of an Arab citizen, especially when that spouse was from the occupied territories. She would like the delegation of Israel to comment on that point.

71. Finally, she was delighted to hear that a bill concerning civil marriage was under consideration and hoped it would be approved, since it was needed for the implementation of obligations under article 3 of the Covenant.

72. Mr. ANDO said he agreed with Mr. Lallah about the sweeping nature of Israel's reservation concerning personal status. The reservation appeared to be necessitated by the strange mixture in Israel of the State and traditional religion. The scope of the reservation's application was ambiguous, however: the specific article or articles to which it applied had not been made clear. He therefore considered it to be impermissible.

73. In connection with freedom of expression, the report cited legislation dating from the colonial period (Press Ordinance, 1933, Defence (Emergency) Regulations, 1945 and Cinematic Films Ordinance, 1927). The time had surely come for Israel to review the basic principles behind that legislation: as an independent State, it had sooner or later to cast off the legacy of the colonial past.

74. Finally, he wished to know whether the expression "proximate certainty" used in paragraph 634 (a) of the report was equivalent to the "near" certainty referred to elsewhere.

75. Ms. GAITAN DE POMBO said that Israel had submitted a voluminous initial report which gave a good idea of the context in which the Covenant was being implemented. She shared the concern of other Committee members, however, about the application of the Covenant in the occupied territories and the conditions of detention and would like more specific information on the difficulties involved in the coexistence of the various religious communities. In particular, she wished to know what specific steps were being taken to facilitate that coexistence and how the persistent tensions connected with freedom of thought, conscience and religion were being handled.

76. Mr. KLEIN said it was acknowledged in paragraph 592 of the report that, under the Defence (Emergency) Regulations, it was not always necessary to give reasons for revoking a newspaper's licence to publish and that judicial examination of such decisions was, consequently, restricted. Paragraph 595 indicated that, under the same Regulations, the newspapers had agreed to self-censorship in military matters. While Israel had not specifically derogated from article 19 on freedom of expression, it would appear that its legislation failed to meet the criteria set out in that article. He hoped that the new Basic Law on Freedom of Expression and Association would be enacted soon, and he would like some information concerning its status. Lastly, he wished to know whether any attempts were being made to protect the confidentiality of journalists' sources.

77. Ms. MEDINA QUIROGA asked whether it was true that restrictions were placed on the movement of Palestinians between the West Bank and the Gaza Strip or between the West Bank and Jerusalem even where such movement did not involve entry into Israeli territory proper. With regard to article 24, she found it surprising that the Israeli Government was not doing more to prevent child marriages and ritual female genital surgery. More positive action than mere prohibition of such practices was surely called for. Lastly, she remarked that imprisoning a man who refused to consent to be divorced appeared to be a blatant violation of article 9.

78. Mr. BHAGWATI said he associated himself with the previous speaker's question concerning the movement of Palestinians between the West Bank and

Gaza Strip on the one hand, and the West Bank and East Jerusalem, on the other. He would also like some information about the reported demolition of Arab-owned houses in East Jerusalem and Hebron.

79. Mr. YALDEN asked why, given the assurances of freedom from discrimination on religious grounds contained in Israel's Declaration of Independence (paragraph 824 of the report), it was considered necessary to identify people in the national register and on their identity cards in terms of religion and nationality.

80. Mr. ZAKHIA, referring to the laws governing divorce, asked whether the right to seek a divorce was reserved exclusively for the husband and whether a husband was obliged to seek a divorce if his wife had failed to conceive within 10 years of the date of marriage.

81. Mr. BLASS (Israel) said that, in view of the distance separating the West Bank from the Gaza Strip, restrictions had been placed on the movement of Palestinians travelling in either direction in the interests of security and in the light of much unfortunate experience over the past few years. In the case of Palestinians travelling from the West Bank to Jerusalem, it was also necessary to make sure that no one was carrying weapons or explosives. An interim agreement on the subject had been signed with the Palestinian Authority and negotiations on future arrangements were continuing.

82. Mr. SCHOFFMAN (Israel), replying to the question about the citizenship of Israel-born children only one of whose parents was an Israeli citizen, said that, where the two parents were resident in Israel, there was no problem in terms of the child's national insurance entitlement. If only one of the parents was resident in Israel, the National Insurance Institute had to check that the child was indeed domiciled in Israel, a process that sometimes involved delays. However, the application for benefits could be made during pregnancy, in which case the child would, if entitled, receive the benefits at birth.

83. Replying to the question about the citizenship status of the spouse of an Arab Israeli, he said that any delays were a matter of bureaucracy rather than of discrimination on religious grounds; indeed, a petition was currently before the Supreme Court complaining of the slow processing of cases involving the spouses of Jewish Israelis. The procedures involved were designed to prevent citizenship being claimed on the basis of fictitious marriages. It might be true that the process was more drawn out in the Gaza Strip, but basically the situation was the same for both Jewish and Arab Israelis.

84. Replying to various questions and comments concerning Israel's religious divorce laws, he said that there was no possibility of changing the law at the moment. A private member's bill was currently before the Knesset and a decision would be taken in due course. Until then, the divorce laws and, consequently, Israel's reservation to the Covenant in matters of personal status, would remain in force.

85. In reply to the questions concerning the Mandatory legislation governing the freedom of the press, he said that there were moves in the direction of abolishing the requirement for a licence to operate a newspaper. Licences

were withheld only in a very small number of cases where it was proved that the newspaper was under the control of a terrorist organization. The question of protection of journalists' sources was dealt with in paragraph 610 of the report; the Government bill referred to in paragraph 611 was currently in the final stage of consideration by the Knesset. As for self-censorship in military matters, it applied, for example, to the decision not to publish the names of soldiers who had been killed before their families had been informed. Under the new agreement reached with the Editors' Committee, that Committee could appeal against a court decision but the Censor could not appeal if a court ruling went against him.

86. In reply to Ms. Medina Quiroga's comment about child marriage and female circumcision, he said that those practices were certainly not condoned by the law but there was a limit to the extent to which the State could enter the private sphere. A husband was imprisoned if he refused to consent to a divorce because, by so refusing, he placed himself in a situation of contempt of court. In such situations, the rights of the husband had to be balanced against those of the wife.

87. Mr. BLASS (Israel) said that an Arab Israeli woman who married a Palestinian from the occupied territories no longer had to relinquish her citizenship. Replying to Mr. Bhagwati's question concerning the demolition of houses in East Jerusalem and Hebron, he said that such decisions were taken on the basis of town-planning considerations. In cases where houses were built without planning permission, the authorities were sometimes obliged to enforce the planning laws. However, retention permission was given wherever possible, and the owner could take the matter to court before a demolition was carried out. In fact, cases of demolition of houses were infrequent and thousands of houses built without housing permission in East Jerusalem in recent years had not been destroyed.

88. Mr. SCHOFFMAN (Israel), replying to Mr. Yalden's question concerning the indication of nationality on identity cards, said that the measure had once been thought necessary for security reasons and had continued largely as a result of inertia. A bill to repeal it was before the Knesset and a decision was awaited shortly. Replying to Mr. Zakhia, he said that the consent of both husband and wife was required for a divorce; a wife was not obliged to consent to divorce if the marriage had remained childless for 10 years. Lastly, replying to a supplementary question by Ms. Evatt, he said that the domicile of children born in East Jerusalem was established on the basis of where the child actually resided and went to school.

89. The CHAIRPERSON said that the issue at the centre of the discussion had been the need to incorporate the Covenant into the domestic law of Israel and to extend its provisions to all the persons under Israeli jurisdiction, including the population of the occupied territories. Speaking as a member of the Committee, she said she could not accept arguments based on an alleged contradiction between certain provisions of the Covenant and those of the Geneva Conventions.

90. The second issue of central importance was that of Israel's reservations to the Covenant. It was clear that various measures adopted under the state of emergency were inconsistent with the object and purpose of the Covenant;

that was true, in particular, of certain methods of interrogation employed, which, if they did not amount to torture, certainly constituted ill-treatment within the meaning of article 7. It was also true of arbitrary administrative detention. Similarly, the reservation concerning the status of women within the family constituted a very serious derogation from the principle of equality and non-discrimination upheld by the Covenant.

91. She hoped that the Committee's comments and concluding observations would be duly taken into consideration by the Israeli authorities and that the second periodic report would reflect a situation more closely in keeping with the provisions of the Covenant.

92. Mr. LAMDAN (Israel), having thanked the Chairperson and members of the Committee for the positive and constructive spirit they had shown in their consideration of his country's initial report, said that his delegation had listened very carefully to the numerous questions asked and comments made and would report them to the appropriate authorities which would give them the most serious consideration. He hoped that the explanations provided by the delegation had convinced the Committee that respect for human rights formed an integral part of the Jewish religion, the first to proclaim that man was created in the image of God.

93. In considering Israel's record in the field of civil and political rights, it was necessary to take account of its history of 50 years of conflict with most of its neighbours and its ongoing struggle against terrorist individuals and groups deep inside Israeli territory. To try to preserve a democratic and open society while at the same time maintaining security was not an easy task and agonizing choices had to be made.

94. It was to be hoped that the political process in which Israel was currently engaged would lead to permanent peace with those of its neighbours with which it was still at war, thus creating a climate more conducive to resolving many of the problems raised during the discussion.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1678th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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GENERAL COMMENTS OF THE COMMITTEE

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GE.98-16950 (E)

The meeting was called to order at 3.15 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5)

Draft General Comment on article 12 of the Covenant (document without a symbol distributed in the conference room)

1. The CHAIRPERSON invited the members of the Committee to consider and to adopt, paragraph by paragraph, the draft General Comment on article 12 of the Covenant which had been prepared by the pre-sessional Working Group on article 40.

2. Mr. KLEIN, Chairman/Rapporteur of the Working Group on article 40, said that the text of the draft General Comment on article 12 of the Covenant was the result of consultations and exchanges that had taken place among the members of the Committee subsequent to its sixty-second session held in New York in March-April 1998. Editorial changes could, as required, be made by the Secretariat.

Paragraph 1

3. After an exchange of views in which Lord COLVILLE, Mr. ANDO, Mr. KRETZMER, Mr. BHAGWATI, Ms. EVATT, Mr. BUERGENTHAL and Mr. KLEIN took part, the CHAIRPERSON said that the Committee had decided to delete paragraph 1 of the draft General Comment.

Paragraph 2

4. After an exchange of views in which Mr. KRETZMER, Mr. BHAGWATI, Mr. POCAR, Mr. KLEIN, Lord COLVILLE, Mr. EL SHAFEI, Mr. BUERGENTHAL, Mr. ZAKHIA, Mr. ANDO and Mr. LALLAH took part, it was decided, on the proposal of Ms. MEDINA QUIROGA, that paragraph 2 should be reworded to read:

> "Liberty of movement is an indispensable condition for the free development of a person. It also interacts with other rights enshrined in the Covenant, as is often shown in cases before the Committee."

5. Paragraph 2, as orally amended, was adopted.

Paragraph 3

6. Mr. KRETZMER suggested that, in the second sentence, the reference to the State should be removed in order to bring the wording closer to that of article 12, paragraph 3.

7. Mr. POCAR suggested that the second sentence should be reworded in order to specify that limitations must not nullify the principle of freedom of movement.

8. Paragraph 3, as orally amended by Mr. Kretzmer and Mr. Pocar, was adopted.

9. Mr. El Shafei, Vice-Chairperson, took the Chair.

Paragraph 4

10. Mr. KLEIN, Chairman/Rapporteur of the Working Group on article 14, said that the part of the first sentence in square brackets was intended to highlight the changes with regard to freedom of movement that had occurred in several States parties during the 1990s.

11. Ms. MEDINA QUIROGA said she thought that the Committee should focus the entire paragraph on the States parties' obligation to supply information on the relevant legislation and its application in practice. Consequently, the first sentence could be deleted and the second amended so as to emphasize the need for the States parties to supply all the necessary information in their periodic reports.

12. Mr. BUERGENTHAL said he agreed with Ms. Medina Quiroga and suggested that it should also be stressed that, States parties' reports very often did not contain sufficient information on the issue.

13. Paragraph 4, as amended along the lines suggested by Ms. Medina Quiroga and Mr. Buergenthal, was adopted.

Paragraph 5

14. Mr. BHAGWATI proposed that the words "In principle" at the beginning of the second sentence should be deleted since they were pointless.

15. Mr. KLEIN, supported by Lord COLVILLE and Mr. BUERGENTHAL, said that, on the contrary, the words in question were perfectly appropriate in the sentence, inasmuch as a citizen could be unlawfully within the territory of his home State.

16. Ms. Chanet resumed the Chair.

17. Mr. KRETZMER said he wondered whether a State could admit an alien to its territory and then subject him to temporary or local restrictions.

18. After a discussion on the topic in which Mr. YALDEN, Ms. EVATT, Mr. BHAGWATI and Mr. KLEIN took part, the CHAIRPERSON drew the attention of the members of the Committee to a problem of substance. It was not for the Committee to explain in detail what restrictions could be imposed under national law. Under its mandate, the Commission should limit itself to what was stated in article 12, paragraph 3, of the Covenant. Consequently, the fourth and fifth sentences were inappropriate.

19. Mr. KRETZMER proposed that the third sentence of the paragraph be amended to read:

> "The question whether an alien is 'lawfully' within the territory of a State is a matter governed by domestic law, by virtue of which the entry of aliens may be subject to restrictions, provided that as they are in compliance with the State's international obligations."

20. Mr. POCAR, supported by Ms. MEDINA QUIROGA, Mr. YALDEN and Mr. BUERGENTHAL, proposed that the sixth sentence should be deleted as superfluous, since it was obvious that a person who had entered a State illegally but whose status had later been regularized must be considered as being lawfully within the territory.

21. Mr. BUERGENTHAL proposed, therefore, that the words "In that sense", at the beginning of the seventh sentence, should be replaced by the words "In that connection".

22. Ms. MEDINA QUIROGA said that she would like to see a reference included at that point to article 12 of the Covenant.

23. Mr. SCHEINEN, supported by Mr. KLEIN, said that footnote No. 3 should be retained because the Celepli v. Sweden case established an important principle with respect to the meaning of the word "lawfully" in article 12, paragraph 1, of the Covenant.

24. The CHAIRPERSON, summarizing the amendments on which there appeared to be a consensus, said that: (a) the words "In principle" were to be retained at the beginning of the second sentence, the square brackets being removed; (b) the third sentence was to be modified along the lines proposed by Mr. Kretzmer; (c) the fourth, fifth and sixth sentences were to be deleted; (d) at the beginning of the seventh sentence, the words "In that sense" were to be replaced by "In that connection, for the purposes of article 12,"; (e) footnote No. 3 was to be retained, without square brackets; and (f) the rest of the paragraph was to remain unchanged.

25. Paragraph 5 was adopted, with the aforesaid amendments.

Paragraph 6

26. Mr. KRETZMER said that the first sentence of the paragraph read: "The right to move around freely relates to the whole territory of a State, covering also territories for which a State is internationally responsible". He had difficulty with the second half. Article 12, paragraph 1, of the Covenant stated that everyone lawfully within the territory of a State had the right to liberty of movement within that territory and freedom to choose his residence. There was no reference to leaving the territory of a State. If, in the text under consideration, the Committee was covering the right to leave a territory for which a State was internationally responsible and to enter the territory of that State, it went much further than the Covenant required. If, on the other hand, it was a matter of moving around inside the territory for which a State was internationally responsible, that right was self-evident since, if the Covenant applied to the territory, so did article 12. Consequently, either the second half of the sentence went beyond the requirements of the Covenant or it was superfluous.

27. Mr. ANDO said he thought that a long discussion would be needed to define what was meant by "covering also territories for which a State is internationally responsible". Consequently, it would be better to delete the phrase.

28. Lord COLVILLE said he found the second half of the first sentence unacceptable.

29. Mr. EL SHAFEI said he was in favour of retaining the sentence as it stood.

30. Mr. BHAGWATI said that, in practice, under a State's domestic law, an alien might be admitted to enter a specific part of the territory. In such a case, the sentence as it stood would mean that the person in question had the right to move freely around the entire territory of the State concerned, although he had been admitted to enter a given part only and, possibly, subjected to certain restrictions. The proposed text went too far.

31. Mr. POCAR said that Mr. Bhagwati's comments were justified but he drew attention to the last sentence of paragraph 6, which related to possible restrictions which could be applied if they were in conformity with the rules. Moreover, to allay the anxieties of Lord Colville and others, he recalled that, at the time of the ratification of the Covenant, the Government of the United Kingdom had reserved the right to interpret the provisions of article 12, paragraph 1, concerning the territory of a State as applying separately to each of the territories making up the United Kingdom and its dependencies.

32. The CHAIRPERSON said that other States parties had also entered reservations on the subject of article 12. Consequently, it might be better to retain the terms of article 12, paragraph 1, without developing them.

33. Ms. MEDINA QUIROGA did not think it could be said that the territories for which a State was internationally responsible were on an equal basis with the territory of the State. In her view, the first sentence of paragraph 6 meant that article 12 must apply also to the territories for which a State was internationally responsible.

34. Mr. ANDO said it might, perhaps, be necessary to restore, at the beginning of paragraph 6, some of the contents of paragraph 1 ("Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence") which had been deleted.

35. Mr. BHAGWATI said he agreed with Ms. Medina Quiroga and thought that the second part of the first sentence should be retained.

36. The CHAIRPERSON said that retention of the phrase could cause problems, since a State could be internationally responsible for a territory although it had lost part of its domestic control, as a result, for instance, of internal self-government provisions. It would be difficult to reconcile the two positions.

37. Mr. KLEIN said he would try to redraft the text of paragraph 6 in the light of the comments that had been made. The first sentence would read: "The right to move around freely relates to the whole territory of a State.", the second part of the sentence being deleted. The second sentence concerning federal States would be retained. The third sentence would read: "According

to article 12, paragraph 1, a person is entitled to move from one place to another and to establish himself at any particular place". The text added to that sentence took up the substance of paragraph 1, which had been deleted.

38. Mr. POCAR requested that the word "around" in the first sentence be deleted.

39. Mr. BHAGWATI said that, in the penultimate sentence, it would be better if the words "motive or purpose" were replaced by "object or reason". In the last sentence, the word "rules" should be replaced by "provisions".

40. The CHAIRPERSON said that Mr. Klein's modified text for paragraph 6 had been amended or corrected by Mr. Pocar and Mr. Bhagwati. In the French version, the words "d'un motif ou d'un but should, accordingly, be replaced by d'un but et d'un objet.

41. Paragraph 6, as amended, was adopted.

The meeting rose at 6 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1679th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 July 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Ms. MEDINA QUIROGA
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

later: Mr. BHAGWATI
(Vice-Chairperson)

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Italy

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GE.98-16961 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Italy (CCPR/C/103/Add.4; CCPR/C/63/Q/ITA/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Alessi, Mr. Citarella, Mr. Pierangelini, Mrs. Barberini and Mrs. Antonelli (Italy) took places at the Committee table.

2. The CHAIRPERSON welcomed the Italian delegation and paid a warm tribute, on behalf of his colleagues on the Committee, to Mr. Pocar, the Italian member.

3. Mr. ALESSI (Italy), reviewing the developments that had taken place between January 1996, the date of completion of Italy's fourth periodic report (CCPR/C/103/Add.4), and June 1998, drew attention to Act No. 675 of 31 December 1996 on the protection of personal data, which represented a significant step forward in upholding the principle of inviolability of privacy. A conscientious objection bill, which was about to be adopted by Parliament, represented another important advance. In the field of criminal law, an Act adopted in August 1997 had modified the provisions of the Code of Criminal Procedure, so as to make it impossible, in cases where a defendant was tried in absentia, for statements made by him or her during the preliminary investigation to be used against third parties without their consent.

4. Under an Act of 16 July 1997, implemented by a Decree-Law of 19 February 1998, criminal offences punishable by less than 20 years' imprisonment could henceforth be tried before a single judge; only the more serious crimes, as well as certain offences against public order and security, certain violent sexual offences and certain cases of criminal bankruptcy had still to come before a panel of judges. The object of the reform was to speed up criminal proceedings in Italian courts.

5. With a view to reducing the prison population, Act No. 165 of 27 May 1998 allowed persons sentenced to less than three years' imprisonment to apply for an alternative penalty within a period of 30 days. As far as the treatment of prisoners was concerned, a recent judgement of the Constitutional Court had confirmed the absolute ban on treatment which was inhuman or inconsistent with the object of reforming the prisoner.

6. With regard to immigration and the status of aliens, an Act adopted by Parliament on 6 March 1998 regulated various aspects of the problem of illegal immigration, provided guarantees for legal immigrants, and envisaged the establishment of a system of international cooperation with the most important countries of origin. Negotiations towards that end had already begun.

7. With regard to the protection of minorities, a Bill designed to bring the legislation in force into line with the general principles embodied in the international instruments had been approved by the Chamber of Deputies on 17 June 1998 and was currently being considered by the Senate. Lastly, with

regard to freedom of worship, the Constitutional Court had adopted an important judgement in November 1997, and a Bill was currently before the Chamber of Deputies to amend the existing legislation which proclaimed Catholicism to be the State religion and merely "accepted" other religions. Criminal laws concerning "offences against the State religion and other accepted creeds" would be amended in consequence.

8. The CHAIRPERSON, having thanked Mr. Alessi for his introduction to the report, invited the Italian delegation to reply to the questions contained in paragraphs 1 to 6 of the final list of issues (CCPR/C/63/Q/ITA/1/Rev.1).

9. Mr. CITARELLA (Italy) said that the institution of the Justices of the Peace was still too recent for any assessment of its impact to be made. In any event, a Justice of the Peace was not empowered to try criminal cases. Several other legislative measures had been adopted to shorten both criminal and civil proceedings before the courts, but their adoption had unfortunately coincided with a considerable increase in the number of cases both civil and criminal, the latter being largely due to the serious and continuing problem of illegal immigration.

10. Special sections of the courts of the first instance had been established to deal with cases that had remained pending for several years and, as already mentioned, less serious criminal cases could henceforth be tried by a single judge instead of by a panel of judges. A positive development could not, however, be expected immediately; the best that could be hoped for was that the increase in the number of cases would be offset by improvements of a procedural nature.

11. Replying to the question in paragraph 1 (b), he said that a mentally disordered offender could be sentenced to compulsory detention in a psychiatric hospital only if he or she was deemed to be dangerous. The dangerous nature of the offender's condition was subject to periodic checks and a decision was taken on the basis of an expert medical examination.

12. In reply to the question in paragraph 1 (c), he said that the decision by juvenile court judges to sentence a minor to confinement in a Juvenile Detention Centre would depend on the seriousness of the crime. Italy had 29 juvenile courts and 21 Juvenile Detention Centres for minors convicted of very serious crimes. In July 1998, the total number of minors detained in such Centres was 471, 259 of whom were aged between 15 and 18 and 216 between 18 and 21; 289 were Italians and 182 were foreigners. During the trial, an accused minor was allowed to remain at large subject to certain measures to ensure his or her presence in court or, where appropriate, attendance at a health establishment.

13. Mrs. BARBERINI (Italy), replying to the question in paragraph 1 (e), said that the Italian legal system was based on the principle that a defendant was entitled to choose how to conduct his defence and whether or not to attend his trial. Whether held in custody or free, a defendant was entitled to refuse to appear at his trial. In that regard, the Italian system was different from that of other countries, both in Europe and elsewhere. However, every defendant, whether or not he appeared in court and even if he wished to conduct his own defence, had to be assisted by a counsel, either of

his choice or appointed by the court. A trial in absentia thus did not limit the right of defence in any way. A further consequence was that there would not automatically be a new trial if the defendant changed his mind and decided to appear before the court after all.

14. The authority to decide whether to proceed in the absence of the defendant lay with the court, provided that the defendant had been duly informed that the trial was to be held and there was no legitimate reason for his non-appearance. Where there was evidence (or probability) of the summons not having come to the defendant's attention through no fault of his own, the court could summon him again. Likewise, if a defendant's failure to appear at the first hearing seemed to be due to a legitimate impediment such as illness, being in custody in another country or unexpected events beyond his control, the court could order another summons to be served.

15. A defendant who considered that a court decision to try him in absentia had been taken in error had the same possibility of redress as a defendant who was present at his trial and was free to appeal against the court's decision. If, during the hearing of the appeal, the defendant was able to prove that the order to hold the trial in absentia was null and void because he had had no knowledge of the summons or for any other legitimate reason, the Court of Appeal would order the first instance trial to be made ex novo.

16. Ms. Medina Quiroga, Vice-Chairperson, took the Chair.

17. Mr. CITARELLA (Italy) said that a sentence passed in absentia was not enforceable and could be suspended by the judge if the defendant could not be found.

18. The regime governing in absentia trials, which was not fully compatible with article 14, was one reason why Italy had not yet withdrawn its reservations to the Covenant. However, his Government was reviewing the situation in the light of the new and more progressive Code of Criminal Procedure. Where reservations related to constitutional provisions, their withdrawal called for the enactment of a law. Other reservations were likely to be withdrawn very soon.

19. In connection with the question in paragraph 3 (a), he said that criminal and disciplinary proceedings had been brought against members of the State police, the carabinieri and the Prison Service Police. As at the end of 1997, criminal proceedings had been initiated against the State police or carabinieri in several hundred cases. In the case of the Prison Service Police, criminal proceedings had been brought during the period from 1994 to 1997 against 122 warders for offences against prisoners coming within the broad definition of torture. The cases currently before the courts concerned such offences as personal injury, beatings, and abuse of disciplinary or correctional procedures.

20. Torture had not yet been made a specific criminal offence because the Italian Criminal Code contained detailed and complex provisions governing all offences coming within the broad definition of torture. As a result, no act of ill-treatment or torture could go unpunished and judges were in a position to ensure that the penalties imposed were commensurate with the gravity of the

offence. However, the Interdepartmental Committee for Human Rights, taking into account the recommendations of the Human Rights Committee and the Committee against Torture, had recommended that the Government should consider incorporating a specific offence of torture in the Criminal Code.

21. At the same time, the Ministry of Justice, motivated by the fiftieth anniversary of the Universal Declaration of Human Rights, was contemplating ways of giving more prominence to the obligations incurred by Italy when it had ratified the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There were plans to table a bill which would introduce torture into the Criminal Code as an aggravating circumstance, thereby enhancing rather than modifying the existing regime.

22. The situation as regards overcrowding in Italian prisons had improved over the past two years but was still a major problem. The total prison population at the end of 1997 had stood at roughly 50,000. However, the amendment to article 655 of the Criminal Code by the Act of 27 May 1998 enabling a convicted person, in the case of a prison sentence of not more than three years, to apply for the execution of an alternative penalty should result in a reduction of between 15 and 20 per cent in the prison population.

23. There were no specific statistical data on criminal offences committed within prisons. However, he would circulate tables compiled by the Ministry of Justice which showed trends over the past five years in a whole range of incidents that occurred in Italian prisons, including various types of offences such as aggressive behaviour, hunger strikes, refusal of health care, suicide attempts and so forth.

24. The situation described in paragraphs 79 and 80 of the report with respect to the incidence of HIV and AIDS among prisoners remained unchanged. The Interministerial Commission for Action Against AIDS had expressed its opposition to the idea of separate detention for HIV-positive prisoners, since it would involve segregation and mandatory screening. Small-scale experimental diagnostic and treatment centres had been established in local prisons in Milan, Naples and Genoa for male detainees infected by the AIDS virus.

25. Referring to paragraph 33 of the report, he said that a special supervisory regime could be imposed by prison authorities for a maximum period of six months on prisoners whose unruly conduct had disrupted the prevailing order in penitentiary establishments. On no account could such a regime involve restrictions on meals, health care, acquisition of authorized articles, daily exercise or interviews with counsel or close relatives. Appeals against the special measures could be lodged with the Surveillance Tribunal and the presence of counsel at the hearing was compulsory. The Constitutional Court had reaffirmed the principle that differentiated regimes must comply with humanitarian principles, be consistent with the primary objective of rehabilitation and allow for participation by detainees in cultural, recreational and other activities aimed at personality development.

26. Suspects could not be interrogated in the absence of counsel and the interrogation must be recorded unless it took the form of a public hearing. Under the Italian legal system, the magistrate responsible for the pre-trial

investigation had the status of a third-party judge since, unlike the Public Prosecutor he was not a party to the proceedings and could be considered independent and impartial. Law No. 332 of 8 August 1995 prohibited the Public Prosecutor from interrogating a person held in police custody prior to the preliminary investigation by an independent magistrate, a provision which enhanced the role of the defence counsel. However, paragraph 124 of the report drew attention to the drawbacks of the system, namely, delays in the investigation process and limitation of the scope of the preliminary investigation which had the sole function of guaranteeing the rights of the accused.

27. Most of the isolated incidents of racial intolerance referred to in paragraph 198 were cases of anti-Semitism. The number of such incidents had increased from 51 in 1996 to 85 in 1997. During the first two months of the current year, eight incidents had been reported, including two involving anti-Semitism. The corresponding figures for the first two months of 1997 were ten and one respectively.

28. Law No. 205 of 25 June 1993 on incitement to racial hatred or discrimination was proving an effective deterrent, as well as a and means of punishment, for racist or anti-Semitic offences. The Central Department for Prevention had circulated instructions to the local police stations concerning the application of the Law.

29. Under the new Law on illegal immigration, his Government was engaged in a vigorous campaign to halt illegal immigration and the exploitation of migrants by criminal organizations. More stringent controls had been introduced at border points and steps had been taken to ensure strict compliance with the new rejection and expulsion procedures. From a humanitarian point of view, however, foreign vessels could not be prevented from docking at Italian ports and their passengers were admitted on a provisional basis.

30. His Government attached high priority to the negotiation of agreements with the countries of origin of illegal immigrants, such as Tunisia, Algeria, Turkey and Albania, in order to establish conditions for the return of such persons unless they were asylum-seekers or recognized refugees.

31. The new immigration Law stipulated that all illegal aliens must be treated with respect. Temporary housing centres had been established in many of the southern towns, where illegal immigrants were provided with assistance, shelter and health care pending a decision on their final status and destination. They were entitled to seek legal advice and to contact acquaintances. Refugees and asylum-seekers enjoyed all the benefits provided for in the Convention on the Status of Refugees and could appeal against any decision involving refoulement or expulsion to another country within or outside Europe.

32. Under the new Law, air and shipping carriers could be fined up to 5 million lire for each passenger they illegally conveyed. In particularly serious cases, their licence to transport passengers could be suspended or revoked. All such carriers were obliged to return illegal immigrants to their point of departure.

33. The recently established Ministry for Equal Opportunities had special powers to take administrative action to ensure absolute parity of treatment of men and women. The oldest piece of legislation in that area dated from 1977 and the basic underlying principle was to ensure equal pay for equal work or work of equal value. The Government had no power to intervene in the establishment of specific working conditions except where they related to health or safety. Wages and other working conditions were negotiated between the trade unions and employers' organizations. However, the new Ministry was endeavouring to investigate the existence of private or semi-private arrangements that violated the general principles of equal pay for equal work. Although some progress had been made, there was still a long way to go before absolute parity was achieved.

34. In 1991, an equal opportunities law had been passed which, in particular, defined indirect discrimination as prejudicial treatment following the adoption of criteria which could place workers of either sex at a disadvantage, and which related to requirements not essential to the performance of the work in question. An Equality Counselling Office had been set up to which complaints of discrimination could be brought, and which provided information and advice. The Constitutional Court had recently declared it unconstitutional for job requirements to include physical parameters such as height that were undifferentiated by sex, regarded as a form of indirect discrimination. In 1992, a law had been passed designed to facilitate employment of women in business, covering such issues as working hours and parental leave. More recently, a directive of 7 March 1997 outlined Italy's plans for implementing the Beijing Platform for Action. His delegation could provide more detailed information on the subject if required.

35. As for the question in paragraph 6 (b), the Ministry for Equal Opportunities had recently introduced a bill to deal with the problem of domestic violence against women. The bill had been approved by the Council of Ministers on 4 July 1997, and was currently awaiting approval by Parliament. It not only penalized any form of violence against women, but also provided that, if the woman was subjected to violence in her own home by any member of her family, the person guilty of the offence could be ordered to leave home and banned from returning.

36. Lord COLVILLE asked, in connection with article 14 of the Covenant, whether there was any system of initial training and subsequent refresher courses for judges and Justices of the Peace, since such a system usually resulted in an improvement in the quality of justice. Had the judiciary in Italy been made familiar with the contents of the Covenant?

37. While he welcomed recent attempts to speed up the judicial process, he would like to know whether it was still true that half the prison population consisted of persons in pre-trial detention. Was there any process whereby a person remanded in custody could apply for release on bail, and how long did that process take?

38. There was evidence to suggest that the provisions of article 14, paragraph 3, subparagraph (c), of the Covenant concerning promptness of trial were not being applied in Italy. In one case, in 1985, a person had died in a police station following severe ill-treatment. In 1990, 10 police officers

had been charged in connection with the death; in 1994, the case had gone to appeal; in 1995, the Court of Cassation had annulled the decision and ordered a retrial; in 1996, some of the police officers had been resentenced by an appeal court, and, finally, the Court of Cassation had annulled that decision in 1997 and ordered a further retrial. There had thus been no conclusion of the criminal proceedings 13 years after the event. Such a delay could not be justified and, if it was the rule rather than the exception in Italy, he would suggest that urgent action be taken to remedy the situation.

39. Ms. Chanet resumed the Chair.

40. Mr. YALDEN said that two members of the delegation had referred to a new Act designed to overcome the problem of prison overcrowding. However, the report indicated that that problem was a major one, with serious effects on the health and hygiene of prisoners. He would like to know what specific measures under the new Act would reduce the prison population by 20 per cent.

41. On the matter of equal rights for men and women, he found the report disappointing: paragraph 25 devoted only four lines to the implementation of article 3 of the Covenant. Italy's third periodic report had provided material on legislation, but had said nothing about progress made in encouraging the employment of women, in either the public or the private sector. No figures were given on the percentage of women in Italy's workforce or on the percentage occupying senior positions. The proportion of women in Parliament was small, which was not an encouraging sign. The delegation had made reference to equal pay for work of equal value, but had suggested that the Government had little say in the matter since wages were decided by collective bargaining. It was vital that there should be legislation governing that important issue. Nothing was said in the report about measures taken to guarantee proper working conditions, or to penalize sexual harassment in the workplace.

42. Concerning the question in paragraph 6 (b) of the final list of issues, he would be glad if the delegation could make the text of the domestic violence bill available to the Committee. He pointed out that, as was clearly stated in the Committee's guidelines on the preparation of reports, it was not sufficient for States Parties to cite legislation that had been enacted. The Committee needed to know what was the actual situation in the country with regard to respect for the rights enshrined in the Covenant.

43. Reference had been made to the Ministry for Equal Opportunities, but nothing had been said about any system of human rights monitoring by an independent body. When Italy's third periodic report had been presented, the Committee had urged that steps should be taken to ensure increased participation by women in public life in Italy, and also that an ombudsman or similar independent institution should be set up to monitor progress. Paragraphs 9 and 10 of the report indicated that the setting up of such an institution was still under study, but he could not see why four years of study should be necessary. Such an institution would also be valuable in helping to deal with the problems of immigrants and foreigners resident in Italy.

44. Lastly, he noted that nothing was stated in the report as to what remedies were available to victims of racial intolerance or discrimination on ethnic grounds.

45. Mr. PRADO VALLEJO said he would appreciate more information on Italy's policy towards refugees. He was aware of the problems caused by the avalanche of immigrants from countries suffering from civil wars and population displacements, but it would seem that, while in some cases reasonable criteria were applied, in others the treatment was discriminatory and restrictive. For instance, in many cases, refugees were held incommunicado, a treatment he considered unnecessarily severe.

46. Incidents of racial violence in Italy unfortunately appeared to be continuing. The concluding observations of the Committee on the Elimination of Racial Discrimination had referred to recent cases of violence against gypsies and persons from North Africa. He would like to know what response had been made by the Italian delegation to the Committee in question on that point.

47. He had not been convinced by the explanations given by the delegation that the problem of torture was covered by the provisions of the Code of Criminal Procedure. It was vital for the effective protection of human rights that torture be specifically classified as a crime, and he pointed out that States parties were obliged under article 2 of the Covenant to adopt such legislative or other measures as might be necessary to give effect to the rights enshrined in it.

48. It would seem that ill-treatment of persons held in prisons in Italy still persisted and that there were frequent cases of ill-treatment of foreigners, which would seem to be linked with the problem of racial discrimination. In other countries, education of police and prison staff in human rights had been shown to give positive results.

49. He stressed that pre-trial detention constituted a violation of the principle of presumption of innocence, and should be the exception rather than the rule. Italy's use of exceptionally lengthy pre-trial detention had always been a matter of concern to the Committee, and he would like to know if there were plans to remedy that situation.

50. He would like to know why male members of the Royal House of Savoy were still prohibited entry to the country, but not female members: that would seem to be a case of discrimination against men.

51. He was not clear what was meant by the statement of the Constitutional Court that detention should not consist of "treatment contrary to the sense of humanity" (para. 32). Lastly, with reference to paragraph 33 of the report, he would like to know what specific remedies were available to detainees who had suffered treatment constituting a violation of their rights.

52. Mr. KLEIN said that he welcomed Italy's ratification four years earlier of the Second Optional Protocol to the Covenant, and also welcomed the judgement referred to in paragraph 30 of the report in respect to extradition

for offences punishable abroad by capital punishment. Those two developments were evidence of a significant advance towards guaranteeing protection of the right to life under article 6 of the Covenant.

53. He would like to know whether the judgement referred to in paragraph 32 of the report had had any influence on consideration of whether sentences of life imprisonment should be subject to review, to allow for the possibility of eventual release.

54. Lastly, he wished to know whether the new Constitutional Court ruling on the protection of individuals subject to extradition procedures against torture and inhuman treatment in their countries of origin covered only ill-treatment by State organs, or extended also to abuse by groups of private citizens.

55. Mr. EL SHAFEI said it was encouraging to see that the Committee's concluding observations on the third periodic report of Italy had been taken into account in the preparation of the fourth, which was concise and precise, but gave extensive details about the regulations governing the enjoyment of human rights. More information was needed, however, about the practical aspects of human rights implementation: fortunately, the oral presentation had done much to fill in the gaps.

56. The ongoing legislative reform and adoption of new legislation was a positive development, as it addressed a number of very important issues. It was likewise encouraging to note the institution of the ombudsman, the designation of torture as a crime and the ratification of the Second Optional Protocol to the Covenant. Reference had been made to steps towards withdrawing Italy's many reservations to the Covenant. That objective had already been suggested, however, during the consideration of the third periodic report, but there had been no practical results so far. He hoped that the Italian delegation would impress on its authorities that the Committee hoped they would seriously consider withdrawing those reservations.

57. There had been extensive reports of ill-treatment of detainees, a matter of considerable concern. The actions of the Italian contingent with the United Nations peacekeeping forces in Somalia had likewise been criticized, and he would like information on the commission that had apparently been set up and on any other actions taken to address such issues. Lastly, he requested details of measures taken to alleviate the concerns expressed by many Governments about the treatment of immigrants and discrimination against foreigners in general.

58. Mr. SCHEININ said that, like Mr. El Shafei, he was concerned about the actions of the Italian military forces in Somalia. The reporting obligations of States parties extended to acts outside the national territory, and the Committee would like to have information on such matters.

59. While he welcomed the delegation's replies to the questions asked in paragraph 5, subparagraphs (c) and (d) of the final list of issues, he would like additional information about the implementation of carrier sanctions, particularly in the light of Italy's obligations under the Schengen and Amsterdam agreements. Italy's delegation to private carriers of some of its

responsibilities for the protection of human rights might raise problems. For example, a person trying to leave his or her own country would have to present a request for asylum to an airline or shipping company, which might well have close ties to the authorities.

60. Referring to the question in paragraph 5 (b), he asked whether current Italian legislation on incitement of racial hatred or discrimination covered calls by public figures for the collective deportation of nationals of a given country - such as, Albania. It had become clear in many Western countries that politicians played a predominant role in promoting tolerance and eradicating xenophobia. He would thus like to know whether any public figures had been prosecuted for incitement to racial hatred.

61. Overcrowding in prisons, immoderate periods of pre-trial detention and the lengthy duration of criminal proceedings were all causes of concern. Comparatively speaking, the number of prisoners in Italy was not very great, and the authorities must take some kind of action. Building new prisons was not the only solution: alternative forms of punishment should also be considered.

62. In the discussion of the Italian report to the Committee on the Elimination of Discrimination against Women, mention had been made of the implications of European economic and monetary union for the situation of women and, more particularly, of the possibility that overall social security cuts might lead to women's exclusion from social security benefits. That problem having been identified, he wondered what had been done or was being done to safeguard the rights of women under articles 3 and 26 of the Covenant.

63. Ms. MEDINA QUIROGA requested clarification of paragraph 37 of the report. It indicated that suspects "under preventive detention" could be denied access to their defence counsel for five days. That appeared to contradict what had been stated by the delegation and raised issues under article 9. She would like to know what, in fact, was the maximum length of preventive detention. Paragraph 84 referred to a person "sentenced to preventive detention of not more than four years", a concept with which she had great difficulty - perhaps it was a translation problem. Similarly, paragraph 79 said that the court would take account of the "remaining period of preventive detention to be served", in making a certain assessment. There, too, she was at a loss to understand what was meant.

64. Paragraph 67, subparagraph (a), of the report referred to violence in sports stadiums, a problem which occurred throughout the world and to which every Government's response, she suspected, raised questions regarding compliance with the Covenant. She was concerned about the ban on entering sports stadiums of persons "reported" to have been on the same premises with weapons. No court conviction for weapons possession or violent behaviour was apparently required, and it was not clear who imposed the ban. Subparagraph (e) indicated that the ban could not exceed one year, but that meant that the person's freedom of movement was being restricted even before a court decision on his or her guilt or innocence had been handed down. She requested clarification on those points.

65. She endorsed Lord Colville's comments on article 14 and agreed with Mr. Yalden that insufficient information had been provided on article 3. Lastly, she concurred with Mr. El Shafei and Mr. Scheinin about the need for information about the events in Somalia.

66. Mr. BUERGENTHAL said he was impressed by the major reforms of criminal procedure and administration of justice in Italy over the past few years and by the role being played by the Constitutional Court in the development of civil liberties. The concerns expressed by other members about "preventive detention" were valid ones. No indication was given in the report of the actual time limits on such detention, and he would like to be enlightened on that point. In particular, he would like to know whether there was any legislation to provide compensation to individuals, in the event they were acquitted of any wrongdoing, for the time spent in preventive detention. If such legislation existed, he would also like to know the rate of success of individual appeals for compensation.

67. The description in paragraph 30 of the report of the Constitutional Court judgement on extradition did not make it clear how that ruling improved on the earlier legislation, and he would welcome clarification of that point.

68. He asked whether it was possible for courts or other independent public organs to carry out surprise inspections of prison facilities. Such a possibility often helped to ensure that prisoners were not abused and that prisons met minimum international standards.

69. The Italian delegation might, perhaps, supplement its excellent explanation of trial in absentia on one point and inform the Committee whether, when an individual was accused of a crime and subsequently could not be found, but there was evidence that a court order had been served, the person was tried in absentia more or less automatically. Lastly, he would like to know if people in pre-trial detention were segregated from those who had already been convicted.

70. Mr. ZAKHIA said it was clear that Italy had achieved legislative equality between men and women in terms of enjoyment of civil and political rights. However, like all Mediterranean countries, it had treated women as inferior to men for many centuries and, consequently, equality on the legislative plane was not in itself sufficient. Practical measures had thus to be taken to reinforce women's place in political life at the highest level, including the executive and the legislature, and he would like to know whether any policies had been instituted along those lines and what role was actually played by women in decision-making.

71. Mr. ANDO said he would like to know whether there was a time limit for pre-trial detention, and if so, what it was. He requested clarification of the reference, in paragraph 51 of the report, to maximum time periods for "preventive detention", save in the case of proceedings relating to organized crime. What was the maximum time period in such a case? Under what conditions was preventive detention imposed? He would also like clarification of the exception for "particularly serious crimes" outlined in paragraph 54: what crimes were meant, and why were they treated differently from other crimes?

72. Referring to paragraph 140 of the report and to Law No. 120, which required Italy to cooperate with the International Tribunal for the Former Yugoslavia, he asked whether Italy had yet handed any suspects over to the Tribunal. Lastly, paragraph 142 described certain provisions in that Law, including one on the role of non-governmental organizations (NGOs). He would appreciate further information on that point.

73. Mr. Bhagwati, Vice-Chairperson, took the Chair.

74. Mr. KRETZMER asked whether a person who was known to be out of Italian jurisdiction, but whose whereabouts were unknown, could be tried in absentia and whether there was a system that made it possible to assume that a person had received a summons to trial. If a person subsequently returned to Italian jurisdiction, did he or she automatically have the right to a retrial?

75. Paragraph 39, subparagraph (a), of the report referred to "pressing reasons" for preventive detention but did not make clear what they were. Paragraph 41 stated that preventive detention was prohibited "when a suspended sentence is likely to be passed", thereby implying that the outcome of the court proceedings could be predicted. Paragraph 39, subparagraph (e), said that refusal to make a statement or admit guilt could not be considered to constitute an actual threat to the gathering of evidence. While the laws seemed fairly reasonable, he feared there might be a disparity between them and their implementation in practice.

76. On prison conditions, he would like to know more about the way in which a complaint of ill-treatment in prison or in preventive detention could be made. To whom was the complaint addressed, how was it processed and what was the time frame for its processing? Was there any protection for incarcerated complainants to prevent them from incurring punishment for their complaints?

77. Mr. LALLAH said he would like to know whether, once a suspect was arrested or taken into custody, he or she had access to counsel immediately. If no statement was taken from a suspect until counsel was present, then what was supposed to happen during the five days preceding his or her meeting with counsel?

The meeting rose at 1 p.m.

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Sixty-third session

SUMMARY RECORD OF THE 1680th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI

later: Ms. CHANET

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GE.98-16980 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Italy (CCPR/C/103/Add.4; CCPR/C/63/Q/ITA/1/Rev.1) (continued)

1. At the invitation of the Chairperson, the members of the Italian delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited the Italian delegation to reply to the questions asked orally by members of the Committee concerning items 1 to 6 of the list of issues to be taken up in connection with the fourth periodic report (CCPR/C/63/Q/ITA/1/Rev.1).

3. Mr. CITARELLA (Italy) said he would begin with the matter of racial discrimination, since the Committee, when concluding its consideration of the third periodic report (see A/49/40, paras. 271-290), had been concerned about the persistent cases of ill-treatment and also racist tendencies vis-à-vis non-European foreigners and persons belonging to minorities. His delegation believed that that concern stemmed from complaints addressed to certain NGOs. His Government had requested the carabinieri to prepare a detailed and analytical record of all cases of alleged ill-treatment suffered by persons under arrest or kept in custody between 1994 and 1997. The study had taken into account all complaints filed against carabinieri on such grounds, regardless of whether the evidence was credible, and it had emerged that 47 of the complaints concerned foreign nationals, from Europe or other regions of the world. The study highlighted what was well known to the authorities and NGOs, namely that foreigners, especially those who were not from the European Union, were less familiar with the safeguards provided by the Italian legal system, since they had not been in Italy very long and tended to report complaints of alleged ill-treatment to NGOs, instead of going through the normal legal channels. There could be no doubt that by publishing the figures of complaints they received, the NGOs did not give the general public an accurate picture of the situation, but exaggerated the number of cases of alleged ill-treatment of foreigners. The report prepared by the carabinieri was a document of approximately 50 pages, which recorded each case separately, and was available to members of the Committee for detailed examination.

4. The delegation had been asked what happened when politicians were implicated in acts that might constitute incitement to racism. Anti-racist legislation applied to everyone in Italy, foreigners and politicians alike. When a member of Parliament or the Government made a statement which amounted to incitement to racial discrimination or any other offence covered by the Anti-Racism Law, criminal action would be taken. In that connection, it should be noted that the scope of immunity enjoyed by members of Parliament had been somewhat reduced.

5. In reply to other questions, he said that inspections of detention centres could be ordered following an article or report indicating that something irregular (ill-treatment, etc.) was going on there. It was first

and foremost the responsibility of the Ministry of Justice to take action; it could immediately appoint special inspectors who would go and verify the situation and, if they found that something was amiss, the matter would be followed up even when only one person was involved. Furthermore, there was a practice in Italy which enabled any member of Parliament to visit a detention centre without notice and request an interview with the person or persons concerned, and subsequently refer the matter to Parliament or the Government if necessary. Lastly, if any breaches of regulations or unlawful acts occurred in the prison, it was primarily the responsibility of the prison governor to take any disciplinary or other measures required.

6. In addition to national procedures, there were those provided for under the European Convention for the Prevention of Torture, which had been ratified by Italy and authorized a special committee to come to Italy, after notifying the authorities beforehand, to visit any detention centre, whether it be a police station or other type of penal institution. The members of the Committee could talk to anyone able to give them information on the general situation in the detention centre; the Committee then drafted a report for the Italian Government, which could draw its own conclusions on the Committee's findings. To date there had been two such inspections in Italy, the most recent in 1996.

7. Italy's cooperation with the International Criminal Tribunal for the Former Yugoslavia was covered by a special law adopted for that purpose. However, so far Italy had not been required to take any action in that connection, since none of the persons facing trial before the Criminal Tribunal at the Hague had been found on Italian territory. Italy had not therefore arrested anyone at the behest of the Tribunal.

8. A question had been asked about the compatibility of life imprisonment with a ruling by the Italian Constitutional Court whereby any person in prison could receive appropriate care so as to allow his reintegration into society upon release. Italy had in fact already decided to abolish life sentences; the maximum penalty would henceforth be 25 years' imprisonment for the most serious crimes. Statistics showed that out of a total of some 50,000 prisoners, only 8 were still serving life sentences. Italy had also taken a number of similar measures, including shorter sentences, home leave, etc.

9. With regard to illegal immigration, it was important to distinguish between the three categories of people who attempted or managed to enter Italian territory. First, those who entered the territory illegally were covered by a new law, under which they could remain in Italy for a minimum period in order to receive assistance or for health control purposes, after which they would be expelled and returned to their country of origin, if necessary. Secondly, persons seeking refugee status were dealt with under a special procedure: a joint committee, composed of representatives of the Italian authorities and a representative of the United Nations in Italy, examined the case and decided whether or not to grant the applicant refugee status. Thirdly, asylum-seekers had their case examined by the Italian authorities, who decided, in accordance with the Constitution, whether the case should be followed up; if so, the decision was the subject of a special decree.

10. Questions had been asked on the subject of torture, in particular to ascertain why torture was not classified as an offence under Italian criminal law. In Italy, as in many other European countries, there was a technical obstacle. In accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the term "torture" meant any act by which severe pain or suffering, whether physical or mental, was intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or intimidating him, by a public official or other person acting in an official capacity. However, under the Italian Criminal Code, any public official or member of the security forces who inflicted injury or suffering on a person placed under his supervision could be prosecuted, irrespective of the intent of the action. Consequently, adopting the definition of torture given in the Convention would enable the perpetrators of such acts to escape the rigours of the law more easily than at present. Hence the reluctance of the Italian authorities so far to adopt the definition of torture given in the Convention, although Italy was moving in that direction.

11. The reservations expressed by Italy when ratifying the Covenant had been mentioned. With the introduction of the new Criminal Code, Italy might be able to review the reservations with a view to their withdrawal. One of them concerned the discriminatory treatment against certain members of the former royal family of Italy, who were banned from entering and staying in Italy. That prohibition was enshrined in the Constitution. The withdrawal of the reservation would require a special procedure, but draft legislation had been submitted to Parliament with a view to removal of that restriction.

12. There had been questions about statistical projections or estimates on the consequences of the entry into force of the law of August 1995, which should reduce the number of persons held in detention; a reduction of 15 to 20 per cent had been mentioned. In fact, when the Italian Parliament had considered the law, a study had been undertaken on the different categories of prisoners; from that study it had emerged that most of them were imprisoned for minor offences such as theft, which carried sentences of less than three years. It was too early to assess the consequences of the law, however. Even before it had been promulgated, any person held in detention had been able to request a shorter sentence or a change in the prison regime, and to be allowed to serve his sentence at home, for example. The new element introduced by the law was that if the prisoner so requested, the judge must authorize his release from prison; the decision was no longer left to the judge's discretion.

13. Ms. ANTONELLI (Italy) provided details on the activities of the Ministry for Equal Opportunities (paragraph 25 of the report). Italy had ratified ILO Convention No. 100 on Equal Remuneration, which prohibited it from paying different remuneration to men and women performing the same duties in the same occupational sector. Article 2 of Law No. 903/77 prohibited any form of discrimination between men and women. Moreover, Law No. 125/91 introduced the notion of indirect discrimination by making it incumbent upon the employer to prove that he had not practised discrimination. The basic problem, however, was knowing whether the law effectively established genuine parity between men and women with regard to remuneration. In 1993, male workers' average

remuneration had been 37.5 million lire and women's 30 million lire, a 13 per cent difference, with the same qualifications. Those differences prevailed in all sectors and for a variety of qualifications, but were most marked at the lowest and highest grades. Women accounted for one third of the Italian labour force, but their participation was 60 per cent in services to firms and individuals and in the textile industry. The disparity between the remuneration of men and women was smaller in sectors such as commerce, transport and communications (between 5 and 8 per cent) and larger in the lending and services sector (25 per cent). The difference was due to structural factors (with a higher proportion of women in the poorly paid sectors), contractual factors (women being confined to subordinate positions, for the most part) and factors connected with working hours (women worked less overtime). The surveys conducted were virtually unanimous in concluding that "cultural" problems persisted in firms, which did not readily entrust jobs involving responsibility and coordination - in other words, executive jobs - to women, and that that situation stemmed from the fact that women were less free to adapt to the flexible hours required by firms. That related to the problem of the double working day of women, who needed to reconcile family and employment.

14. Bearing in mind the aforementioned Italian legislation, the Government must engage in collective bargaining, the mainstay of wage-setting, in order to eliminate the various forms of de facto discrimination and demolish the barriers that stood in the way of genuine equality of treatment. That commitment, reiterated at all levels of the dialogue between management and labour and, most recently, in the September 1996 "Covenant for Work", was made manifest in the establishment of the new Ministry for Equal Opportunities. Her delegation acknowledged the existence of a cultural problem regarding equal opportunities in present-day society; for that reason, Italy attached great importance to "affirmative" action as provided for by Law No. 125/91, which dealt, in particular, with the financing of measures concerning flexible working hours, systems designed to improve women's qualifications and their technical training through subsidies to firms.

15. A National Equality Committee had been set up under the Ministry of Labour and comprised representatives of the Government, employers and unions, with competence in matters relating to women's work and the implementation of Law No. 125/91, and also for affirmative action measures. There were also equality counsellors at the local and central levels, appointed by the Ministry of Labour and by the local authorities, who could represent before the courts female workers who were victims of discrimination.

16. With regard to sexual harassment, the Italian Senate had lately passed a bill which was currently before the Chamber of Deputies and the European Code of Conduct concerning Sexual Harassment had been disseminated in Italy. Likewise, numerous national collective agreements provided protection in that area for women workers.

17. In Italy there were many independent bodies concerned with matters of gender discrimination. First of all, there was the National Commission for Equal Opportunities, established under the Office of the President of the Council of Ministers and comprising representatives of political parties, trade unions, employers, women's associations and experts on that subject.

That Commission was concerned with women's rights in general and family law; its remit was also to monitor and promote the image of women in the press and other media, and encourage the use of non-discriminatory terms and neologisms. Women's role in the decision-making process and, more particularly, their participation in politics were limited: there were 8 per cent of women in the Chamber of Deputies and 9 per cent in the Senate. That situation was due partly to the change in the electoral system and partly to the Constitutional Court's decision abolishing the quota system. A similar situation prevailed in local administration, and the regional and municipal councils. However, the number of women ministers had increased, and at the local level too women occupied more posts carrying managerial responsibility.

18. Women were represented at a high level in industry: the Association of Young Entrepreneurs in the Garment Industry had a woman president and women accounted for 16 per cent of self-employed workers.

19. Social welfare policy, and particularly the reform of the pension system, affected women in that the retirement age had been raised, although it did not have a direct effect on their level of affluence. Conversely, the Government had raised the family allowances paid to large families in order to offset the effects of the economic crisis on the poorest sectors of the population.

20. Mr. CITARELLA (Italy) confirmed that Italian immigration law was in keeping with the principles and tenor of the Schengen agreement, although the agreement allowed States five years in which to determine their immigration policy.

21. It was a long-standing practice that virtually all persons in pre-trial detention were separated from convicted prisoners. Committee members having remarked that Italy's report provided information essentially on laws and administrative measures but was short on statistics, his delegation was placing at their disposal statistics compiled by the Ministry of Justice on the prison population in Italy at 27 January 1998. The total prison population at that date was 50,093, broken down into five categories, (awaiting trial, having filed an appeal, subject of a final sentence, etc.). The delegation was also placing at the disposal of members statistics on foreign detainees in Italian prisons at 30 April 1998; their total number was slightly over 11,000, or one fifth of the total prison population. Those statistics also emanated from the Ministry of Justice and were broken down by nationality.

22. Committee members had made a general observation concerning the allegations of torture and ill-treatment in Somalia. An investigation had been initiated by the Ministry of Defence, which had not yet delivered its findings. All the cases of torture had been submitted to the national jurisdictions of Livorno and Milan, which had initiated pre-trial investigations. With regard to the procedure instituted to shed light on the torture allegedly inflicted by Italian soldiers in the Johar camp, and on the rape of a Somalian woman at a roadblock in Mogadishu, a preliminary hearing had been organized by a judge, who had heard the statements of the victims and another witness. Medical examinations had also been conducted. The Milan Prosecutor's Office was continuing the investigation into a case of rape by an

Italian soldier in Mogadishu. The final decision on continuation or closure of the case should be delivered by the end of the year. With regard to the individual cases cited by Committee members, his delegation could not supply much detail about Salvatore Marino, except to say that 13 years had indeed passed before a final decision had been taken. The case was very unusual inasmuch as the policemen accused of torture had been charged, and sentenced in the lower and upper courts on two occasions, on both of which the Court of Cassation had quashed the sentence. As to Marcello Alessi, detained at San Michele prison in Alessandria, who in December 1992 had filed a complaint of ill-treatment by a warder, his delegation would place a copy of the sentence at the disposal of Committee members. Following a detailed study of all the statements made by Marcello Alessi and the warder accused of ill-treatment, the detainee had been tried and found guilty of violence against public authority but acquitted of the offence of contempt of public authority. Since Marcello Alessi had not taken his case to the Court of Cassation, the judgement had become final on 25 February 1997. The proceedings against the warder were pending i. the court of minor jurisdiction in Alessandria and the hearing had been postponed; the outcome was still unknown. His delegation thought that it had now answered all the written and oral questions in the first part of the list of issues with one important exception, the issue of pre-trial detention. The reply would be given later in the meeting.

23. In response to Lord COLVILLE, the CHAIRPERSON confirmed that the documents from the Penitentiary Administration Department of the Ministry of Justice providing details on the prison population at 27 January 1998, as announced by the Italian delegation, were being distributed to Committee members.

24. Mr. KRETZMER said that he had asked about the exact procedure used in investigating complaints against police officers. However, his concerns had not been dispelled by the document distributed by the delegation, from which he noted that 83 per cent of complaints had been closed, in other words dismissed, at the very beginning of the procedure. It also seemed that when a complaint was investigated, instead of the investigation resulting in a reprimand for those concerned, proceedings were initiated against the person filing the complaint, which did not encourage victims to report abuses of authority. He would therefore like further details on the full procedure followed in the case of such complaints, as it seemed highly unlikely that most complaints against the police were totally unfounded and could be closed without further action.

25. Mr. CITARELLA (Italy) said he was perfectly aware of the need to subject each case to detailed examination; if the Committee so wished, a detailed analysis could be made with a view to the next report, but the delegation could already explain the procedure: from the moment a complaint was brought against any member of a police force or the security forces, the matter was referred to a judge. The complaint did not languish in a drawer and was never closed by an administrative authority. The judge could hear witnesses and evaluate the facts in order to determine whether the matter should be pursued or closed, which was most often the case.

26. The CHAIRPERSON invited the Italian delegation to answer questions 7 to 13 on the list of issues.

27. Mr. CITARELLA (Italy), taking up the question of the dissemination of the Covenant (question 7 on the list) and, more particularly, the question of the functions and activities of the Committee for the Protection of Human Rights of the Accademia Nazionale dei Lincei, said that that institute had completed the study it had begun in 1980; all the information collected and conclusions reached had been transmitted to the Government, which was to take measures in response to the recommendations. For instance, the Cabinet of the Prime Minister had had 25,000 copies of the survey distributed to all the competent national official organs so as to elicit their reactions and possible suggestions. In addition, all higher education establishments provided courses on human rights, including information on the Universal Declaration, the two Covenants and the other major United Nations and Council of Europe instruments, during the second and third cycles. Every year special human rights courses were organized for all members of the police and security forces, and handbooks specially prepared for them. The same went for judges, for whom internal committees of the Ministry of Justice were responsible for organizing seminars on the promotion of human rights. In Italy's main cities seminars on the defence of human rights were also organized for members of the Bar. Under a recent decree adopted two years previously, the Interministerial Committee for Human Rights had been given an additional mandate. It was now competent to advise the Government on measures to be taken to promote fundamental rights. One of the recommendations already approved was the incorporation of torture as a specific offence in the Criminal Code. Another recommendation concerned the establishment of a national ombudsman, an area covered in another question on the list. Lastly, the Italian Red Cross periodically organized courses for members of the armed forces, considerable parts of which were devoted to fundamental rights and humanitarian law.

28. Turning to the question of the appointment of a national ombudsman and the functioning of the regional ombudsman system (questions 8 (a) and (b) on the list), he remarked that a law had made it virtually obligatory for all municipalities and regional bodies to have a local ombudsman's office - more accurately called a Citizens' defence counsel (Defensore civico). Hence, each region had an ombudsman, who received all complaints from individuals or organizations concerning the competence or action of the local authorities. The regional ombudsmen reported annually to the regional authorities and to Parliament on their activities. It had quickly been realized that there was a need for a common approach for all ombudsmen and that they should have the same powers, for which reason a council of regional ombudsmen had been set up. The ombudsmen met regularly to exchange ideas and attempt to harmonize their activities; the system functioned well. On the other hand, major constitutional difficulties were still impeding the establishment of a national ombudsman. There were fears of a conflict of interest between that institution and the judiciary. The text of a bill listing the conditions for the establishment, and the powers, of the national ombudsman had gone to Parliament, and preparation of the constitutional provisions had begun. The draft constitutional provisions established three different institutions for the defence of citizens: the Constitutional Court, the judiciary and the national ombudsman. Hence, the risk of interference came from the judge, but the matter should be settled shortly.

29. Telephone-tapping (question 9, concerning privacy) must be authorized by a judge, who was required to justify his decision; in cases of extreme urgency, the decision was taken by the Office of the Public Prosecutor and the procedure needed to be validated by the judge within 48 hours. Telephone-tapping was only authorized for serious offences and when there were reliable indications that an offence had been committed and that such intervention was vital to the investigation. Tapping was authorized for a maximum of 15 days but could be extended on the authorization of the judge. A record of tapped conversations was deposited with the Office of the Public Prosecutor within 15 days following the transcription, and the defence counsel must be notified. The transcription must be made in the forms and with the guarantees laid down for expert reports. The judge could refuse to authorize telephone-tapping if he deemed that the requirements were not met. Authorization was often refused. In the wake of cases of indiscretion on the part of the press, which had published sizeable extracts of tapped conversations, the Government had drawn up a bill designed to remove the weak points in current legislation and guarantee total secrecy of tapped conversations.

30. With regard to freedom of thought, conscience and religion (question 10), the National Observatory on Religious Freedom established two years previously had two functions. First, it was responsible for inventorying all new religious movements that did not come under the Catholic faith; it had inventoried 60 types of religious organization, some of which had juridical personality as recognized associations, while others did not. Its second task was to answer all questions raised by the public authorities and examine individual or collective complaints concerning religious freedom. His Government had concluded agreements with a number of churches and religious institutions of all kinds. Parliament currently had before it a bill containing provisions relating to religious freedom and abrogating current legislation on authorized cults. Where the distinction between a religious movement and a sect was concerned, a protracted debate had taken place to determine whether sects should be regarded as religious movements; thinking on the subject was led by judges, even at the highest level of the Constitutional Court. That thinking had culminated in the formulation of criteria for drawing a clear distinction between religious movements or sects and other institutions which appeared to be religious but were not in fact so.

31. Question 11 dealt with the 13 February 1993 decision of the Supreme Court removing the competence of ecclesiastical courts to decide on the nullity of Catholic marriages. Italian judges, as well as the ecclesiastical authorities, were now competent to examine complaints concerning the nullity of marriages solemnized under the Concordat and to rule accordingly, a decision that had consequences recognized by the authorities of the other party.

32. With regard to the rights of minorities (question 12), he recalled that during consideration of the third periodic report his delegation had referred to preparation of a bill on the status of minorities in general, i.e. a sort of comprehensive law setting forth the rights and obligations of all minorities. That bill had never reached Parliament for a variety of reasons. On the other hand, on 17 June 1998 the Chamber of Deputies had approved a bill on the protection of minorities, which was currently at the reading stage in

the Senate with a view to its final adoption. The purpose of that bill was to promote the implementation of article 6 of the Constitution and bring domestic law into line with all the general principles defended by the international bodies. Linguistic minorities were not large in Italy. They were seen as making a major contribution to Italian culture. A distinction was drawn between two main linguistic strains: the Alpine (French, Provençal, Rhaeto-Romanic and the Friuli dialect, present throughout the Alps, in Friuli-Venezia Giulia and Valle d'Aosta), and the Mediterranean (Catalan, Croat, Albanian, Greek minority, mainly present in Sardinia, Sicily and some southern regions). The bill recognized Italian as the official language, but also recognized other languages protected by a long tradition of clearly established communities. The bill further recognized the right to use minority languages alongside Italian in education. The use of minority languages was also authorized in all activities of the municipal councils and other administrative organs. Lastly, with regard to the Slovene minority in Friuli-Venezia Giulia, a special bill had recently been submitted to Parliament for its consideration. Italy had ratified the Additional Protocol on the Rights of Minorities to the European Convention on Human Rights, adopted by the Council of Europe in 1994.

33. In conclusion, in reply to question 13, the Committee would recall that Italy had not instituted a specific system for following up the former's observations when, after examining a communication, it deemed that the author was entitled to redress. The Committee had received only seven or eight communications concerning Italy and, in all the cases in which it had recommended redress, its decision had been immediately executed without need for a particular legal mechanism.

34. Mr. El Shafei took the Chair.

35. Ms. MEDINA QUIROGA said she would like to know whether certain differences would continue under the new legislation on the status of the Catholic Church. For instance, would the Catholic Church maintain its juridical personality in relation to other churches? Would instruction in the Catholic religion continue in State schools? And would certain of the Catholic Church's activities subsidized by the State be maintained?

36. Mr. KLEIN asked about certain aspects of religious freedom. He had read in paragraph 153 of the report (CCPR/C/103/Add.4) that, in addition to the Catholic religion, there were about 350 cults in Italy, and in paragraph 165 that all members of the various religions or denominations had the right to receive public grants. Should one deduce that that right applied to the 350 cults? And had the competent authorities already received any such requests? On the subject of respect for ritual obligations, he would like to know whether Muslim girls were obliged to participate at the same time as boys in school sports such as athletics, swimming, etc. Were the authorities paying special attention to the problems posed by Islam with regard to mixed schools?

37. Mr. BHAGWATI said he understood that there was a mechanism for determining refugee status and wished to know exactly what form it took: was it a judicial organ or an administrative body? Also, while a person who had applied for refugee status was awaiting the decision, could he travel freely

around the country or was he confined to a specific residence? Was the decision subject to appeal? He also wondered about the role and training of justices of the peace and looked forward to the Italian delegation's remarks on that subject. Seminars on human rights issues had been organized for magistrates; he wished to know whether such training for members of the judiciary was provided as a matter of course, at what stage in their careers, and in what context. More particularly, were there forums in which judges examined the implementation of the international human rights instruments?

38. Regarding the institution of ombudsman, he wondered about the field of competence of the regional ombudsmen. The Italian delegation had also voiced the authorities' fears of a possible conflict of competence between a national ombudsman and the judiciary. He did not share that fear, inasmuch as a national ombudsman would examine the justification for administrative decisions, while the judiciary was called upon to deal with points of law. Despite the Italian Government's apprehensions, were there any plans to create the post of national ombudsman, empowered in particular to rule on governmental measures?

39. In conclusion, he wished to know the composition of the Committee for the Protection of Human Rights of the Accademia Nazionale dei Lincei and asked what degree of independence that body enjoyed, whether it was empowered to receive complaints from individuals who considered themselves victims of human rights violations, and whether it could initiate an inquiry and order compensation.

40. Ms. GAITAN DE POMBO welcomed Italy's ratification of the Second Optional Protocol to the Covenant aimed at abolition of the death penalty; the Protocol represented an essential element in protection of the right to life. In that regard, Italy could serve as an example to other States.

41. Concerning dissemination of the Covenant, she had listened with interest to the information supplied by the Italian delegation and particularly welcomed the action undertaken by the Italian Red Cross, particularly the San Remo Institute, where a number of senior officials from Colombia and other Latin American countries had received human rights training. She asked whether issues pertaining to human rights and humanitarian international law were also included in the training received by Italian public officials and servants of the State involved, or likely to be involved, in peacekeeping operations.

42. Despite the adoption of new legislation, manifestations of anti-Semitism and racial hatred and violence had not disappeared and were even on the increase. In that connection, what had been the impact of the seminars, symposiums, round tables and conferences organized on human rights in general and the rights of minorities in particular? She would like to hear the Italian authorities' assessment.

43. Ms. Chanet resumed the Chair.

44. Mr. ANDO recalled that Italy's third periodic report (CCPR/C/64/Add.8) had contained information that betokened a measure of reflection by the authorities on the question of media concentration. In the suggestions and

recommendations made by the Committee following examination of the report (see document A/49/40, para. 287), it had stressed the importance of measures to ensure the impartial allocation of resources and the adoption of antitrust legislation governing the media. However, in the fourth periodic report the implementation of article 19 of the Covenant had been consigned to a single paragraph and nothing was said about the question of media concentration. He would like to hear the Italian delegation's observations on that point and, in particular, to learn how many public and private television channels and radio stations there were. On the legislative front, what developments had there been in the period since the third periodic report had been considered? As he understood it, the two initiatives mentioned in paragraph 169 of the report dealt with matters relating to racial hatred; he would like to know what follow-up action had been taken.

45. Mr. SCHEININ asked whether it was a fact that a person wishing to obtain the status of conscientious objector or to perform civilian service had very little time in which to make such a request. Would that explain why someone could only seek conscientious objector status once he had begun his military service?

46. Ms. EVATT endorsed the questions raised by Mr. Ando concerning media concentration and the Italian Government's follow-up to the recommendations made by the Committee following consideration of the third periodic report.

47. She noted that no paragraph of the report had been devoted to article 8 of the Covenant. Was one to conclude that Italy was not affected by the phenomenon, sadly very widespread in Europe, of traffic in women who were given over, by force or deceit, to prostitution? If, on the other hand, Italy did experience that problem, what measures had the Government taken to protect such women?

48. The CHAIRPERSON invited the Italian delegation to reply to members' oral questions and gave the floor to Ms. Barberini, of the Italian Ministry of Justice, for additional information on the provisions governing pre-trial detention in Italy.

49. Ms. BARBERINI (Italy) explained that "preventive detention" was a measure applied prior to pronouncement of the final judgement. A person could be placed in preventive detention following arrest by the police, or on the basis of a court order. In the former case, the police had to inform the accused of his right to choose legal counsel, who was immediately notified of the arrest. The police could not keep a suspect on police premises for more than 24 hours. In the 48 hours following the arrest, the Public Prosecutor's Office must ask the examining magistrate to rule on the legality of the detention and, if appropriate, issue a preventive detention order. The examining magistrate responded to both those requests within 48 hours, and the preventive detention order was issued after initial questioning, which took place in the presence of counsel. In the second scenario, when the detention did not follow police custody, the suspect's initial interview took place within five days at the most. Detention could be ordered if there were serious indications that a person had committed an offence, or if there was a threat to the gathering of evidence, risk of flight, or a danger that the offence would be repeated. She referred Committee members to paragraphs 36

and 39 et seq. of the report for further information, adding that the amendments made to the pertinent legislation by Law No. 332/1995 were all geared to limiting pre-trial detention. The maximum duration of such detention was established by article 303 of the Code of Criminal Procedure and depended essentially on the seriousness of the offence concerned. It could not exceed 2 years in the case of an offence punishable by a sentence of less than 6 years' imprisonment, 4 years for an offence punishable by 6 to 20 years' imprisonment, and 6 years if the offence carried life imprisonment. In all cases, a person in preventive detention could apply for it to be rescinded, a request on which the judge must rule within five days. Moreover, persons in preventive detention were segregated from convicted prisoners and placed in separate establishments.

50. Turning to certain paragraphs of the report which had clearly given rise to misunderstanding and called for clarification, she said that paragraph 37 should be interpreted in the following manner. Article 104 of the Code of Criminal Procedure provided that, in principle, any person held in preventive detention could immediately contact a lawyer. However, in exceptional circumstances the judge could, at the prosecutor's request, prohibit communication with the lawyer for a specific period not exceeding five days. Paragraph 39 (e) of the report set forth a general principle of Italian law whereby the refusal of the person under investigation or the accused to make a statement or to admit guilt could not be considered in itself to constitute an actual threat to the gathering of evidence. In other words, such a refusal could not be used against the person under investigation or the accused. She called attention to paragraph 51 of the report, whose infelicitous wording had been a source of confusion. In actual fact, article 301 of the Code of Criminal Procedure dealt not with the end of the overall detention period, but with the end of a period of preventive detention ordered for the purpose of gathering evidence. That article provided that, in such a case, preventive detention could not exceed 30 days, save in the case of proceedings relating to organized crime or crimes committed in connection with organized crime. In his order, the examining magistrate was required to specify the duration of the preventive detention, even in cases of organized crime.

51. Paragraph 52 of the report dealt with suspension of the maximum period of preventive detention. In all cases, whether or not the rule was suspended, the duration of preventive detention could not exceed the limits she had indicated earlier.

52. Article 286 *bis* of the Code of Criminal Procedure, the tenor of which was set out in paragraph 79 of the report, dealt solely with preventive detention and contained no provisions relating to post-trial detention. By and large, the fact of suffering from AIDS in no way affected implementation of the provisions pertaining to the duration of post-trial detention. She referred Committee members to her delegation's replies to question 3 (c) of the list of issues.

53. Paragraph 84 of the report referred only to drug addicts sentenced to imprisonment, and not to AIDS sufferers. That having been said, the provisions relating to the maximum period of preventive detention applied in the same way to drug addicts and to AIDS sufferers.

54. The prohibition of pre-trial detention in the case of a likely suspended sentence applied in all cases; suspension could only be granted in the case of a first offender, and provided that the offence committed carried a sentence of less than two years' imprisonment.

55. Mr. CITARELLA (Italy) said that article 314 of the Code of Criminal Procedure provided for a right of redress in the event of unlawful preventive detention. Any person found innocent in a final judgement which established that the crime had not been committed, that the accused was not the perpetrator or that the acts had not constituted an offence at the time when the procedure had been initiated, could claim compensation. Moreover, the legislation provided that any person unlawfully placed in preventive detention could be rehabilitated and given his job back.

56. Mr. KRETZMER asked whether the magistrate ordering preventive detention was the same as the one hearing the case. What percentage of persons placed in preventive detention were convicted and what percentage were acquitted? Whereas the delegation claimed that persons unlawfully placed in preventive detention enjoyed the right of redress and return to their jobs, the right of redress appeared to be subject to other conditions, and it seemed doubtful whether a person could resume his job after an absence of up to six years in the most serious cases. Lastly, he requested comparative statistics on the duration of preventive detention and the sentence passed by the court.

57. Ms. MEDINA QUIROGA said that, in essence, the period of preventive detention could not be fixed in advance. Paragraph 79 of the report said that "incompatibility caused by HIV infection shall be assessed by the court taking account of the remaining period of preventive detention to be served", as though that were a period determined by the judge. Was it possible for someone to be sentenced, so to speak, to preventive detention?

58. Lord COLVILLE said that the provisions of article 9, paragraph 3, of the Covenant were clear: anyone arrested must be brought before a judge within a reasonable time or be released. Four years could not be said to constitute a reasonable time. He therefore wondered whether there was not any appeal procedure and whether, if appropriate, detention orders successively issued by the same examining magistrate could not be monitored by another magistrate, a higher court or a court of appeal, for instance.

59. Mr. BHAGWATI said he shared Lord Colville's concerns regarding a possible infringement of article 9, paragraph 3, of the Covenant. He also wished to know what exceptional reasons would justify extending to five days the period during which a person in preventive detention could not contact his lawyer, and whether it was the prosecutor or the examining magistrate who took that decision. It would be useful to know the number of cases in which those exceptional reasons had been invoked.

60. Ms. BARBERINI (Italy) explained that the judge who ordered preventive detention was not the magistrate who heard the case. Preventive detention designated the period of detention up to pronouncement of the final sentence,

in other words the point where all remedies had been exhausted. The maximum period of detention was therefore the entire period during which a person was detained up to the decision of the Court of Appeal if an appeal was made to that body.

61. Mr. CITARELLA (Italy), replying to the question as to what avenues existed for shortening or avoiding preventive detention, said that there was a special court known as the Tribunal della Libertá, to which any person placed in detention could immediately appeal and which determined, quite independently, whether the person should be kept in detention in the interests of justice or released.

62. Ms. BARBERINI (Italy) added that an arrested person's right to communicate with his lawyer was a systematic right that could be exercised forthwith, but its exercise could also be suspended for precise, exceptional reasons. The decision not to authorize an arrested person to communicate with a lawyer was taken, at the request of the Public Prosecutor's Office, by the judge, who was called upon to set down his reasons in writing; those reasons were generally linked to a threat to the gathering of evidence.

63. Mr. CITARELLA (Italy), replying to several questions concerning religious freedom, said that until fairly recently Catholicism had been considered the State religion. That was no longer the case and all religions were now on an equal footing. The Italian State had therefore decided to sign bilateral agreements stipulating the rights and obligations of both parties with the organs of the main religious denominations. Under those agreements, any taxpayer could donate each year to the Church of his choice 0.8 per cent of the amount of taxes for which he was liable. The reason why no agreement of that kind had been entered into with Islam was that it had no independent decision-making organ, although Rome happened to be the site of the largest mosque in Europe. There was nothing to stop girls attending any school of their choice, and all religions could set up their own schools. The obligation to receive one hour's instruction per week in the Catholic religion had been abolished in secular schools.

64. Mr. PIERANGELINI (Italy) said that the procedure for processing asylum requests, which complied with international norms, already allowed for cooperation between Italy and the Office of the High Commissioner for Refugees. Any denials of the right to asylum could be referred to a committee of appeal.

65. Mr. CITARELLA (Italy) said that, rather like the Académie française, the Accademia Nazionale dei Lincei was an independent academic institution composed of specialists in all fields of culture and science. It published studies and works on a variety of questions, but had no specific mandate.

66. As to conscientious objection, any citizen wishing to opt for civilian service in lieu of military service must give notice of that fact at least 60 days before conscription. However, the law was silent on the possibility of changing one's mind during military service. On the subject of

the media, a number of enactments had been adopted and limited participation in various economic activities connected with the press to 25 per cent. Likewise, the recently established National Radio and Television Authority was responsible for ensuring the media's observance of the law, especially during election periods.

67. Mr. PIERANGELINI (Italy), replying to the question on the traffic in women, said that it was a problem whose international dimension called for an international solution. That traffic was conducted by international networks of Albanians, according to police reports. The Russian mafia's responsibility had also been mentioned.

68. Mr. CITARELLA (Italy) said that Italian judges, who considered such traffic to be a form of slavery, applied with outstanding consistency the international rules relating to the suppression of slavery.

69. The CHAIRPERSON announced that the Committee had completed consideration of Italy's fourth periodic report and thanked the Italian delegation for its receptiveness. She expressed satisfaction with the positive points noted, particularly the role of the Constitutional Court in the promotion and defence of human rights, Italy's successful struggle to abolish the death penalty, and its accession to the Second Optional Protocol. Clearly, Italy was fully aware of the provisions of article 10, paragraph 3, whereby the penitentiary system should be concerned with the rehabilitation of prisoners rather than their exclusion.

70. However, no progress had been made in other fields since the submission of the third periodic report. For instance, the reservations expressed by Italy at the time of ratification of the Covenant had not yet been withdrawn and no national ombudsman had yet been appointed. While the period during which persons in pre-trial detention were forbidden to contact their lawyers had been reduced from seven to five days, it was still too long. Italy had still not made torture a separate offence, and little progress had been made in action to combat racism and to promote equality between men and women, notably in the workplace.

71. On the vexed question of preventive detention, it must be realized that the establishment of a high maximum period and linkage of detention to the penalty incurred undermined the principle of presumption of innocence and the notion of reasonable time. What was perhaps required was the establishment of a period that remained within the limits of reasonable time and did not change according to the penalty.

72. Mr. ALESSI (Italy) said that the dialogue between the Committee and his delegation had been rewarding and that the pertinent questions asked by Committee members attested to the care with which they had studied Italy's report. In the context of the fiftieth anniversary of the Universal Declaration of Human Rights, his Government had two objectives: to help establish a human rights culture in Italy, and to undertake a serious and conscientious examination of the implementation of international human rights

provisions. That work, which had already begun, consisted in reviewing the reservations expressed at the time of ratification of all the international instruments to which Italy was a party and inventorying the lacunae, not only at the legislative level, but also with regard to institution-building and the implementation of human rights standards. Through their questions, the Committee members had assisted in that task by calling his delegation's attention to lacunae and difficulties. His delegation thanked them and remained at their disposal for any additional information they might wish to have.

73. The Italian delegation withdrew.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1681st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 July 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Algeria (CCPR/C/101/Add.1; CCPR/C/63/Q/ALG/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Dembri, Mr. Abba, Mr. Hassaine, Mr. Zerrouki, Miss Akeb, Mr. Hamed Abdelwahab, Mrs. Bouabdellah, Mrs. Zerrouki, Miss Chaieb, Mr. Almas, Mr. Soualem, Mr. Hellab and Mrs. Karadja (Algeria) took places at the Committee table.

2. The CHAIRPERSON invited the head of the Algerian delegation to introduce his country's report.

3. Mr. DEMBRI (Algeria) said that the report currently before the Committee (CCPR/C/101/Add.1) was the fourth periodic report submitted by Algeria in less than two years to United Nations human rights treaty monitoring bodies, thus demonstrating its willingness to continue its cooperation and enhance its dialogue with those bodies. Although the report had been due in 1995, his Government had deferred its submission in the interests of covering more fully the political and democratic restructuring that was in progress.

4. It would be recalled that, when the initial report had been submitted in 1992, his country had already begun the transition towards political pluralism and a market economy required by the wide range of aspirations of the Algerian people. With the adoption of a new Constitution by referendum on 23 February 1989, political pluralism, and universal suffrage and a balance of powers had been selected in a clear expression of the will of the people. That choice had immediately been confronted with the criminal acts of subversive groups determined to impose on society an authoritarian and totalitarian method of governance. The terrorist attacks on the new institutional structure had led the authorities, in January 1992, to interrupt, not the democratic process as was too often wrongly asserted, but the electoral process.

5. Since then, the barbarism of the terrorists groups, though it had spared no social stratum, had in no way altered the determination of the Algerian people and authorities to continue working to establish a State subject to the rule of law and to consolidate pluralist democracy. It was with that in mind that, in 1994, the President had undertaken to renovate the country's political institutions and to restore the electoral process, resulting in presidential and other elections, constitutional reform, and the establishment of mediation machinery.

6. The dialogue begun by those measures still prevailed and remained open to all those who rejected violence and were committed to respecting the Constitution and laws of the Republic and to sustaining the pluralist, democratic and republican political model. Algeria thus possessed legitimate republican institutions within which the public authorities and the politicians were working to strengthen and enrich the values of multi-party democracy.

7. In order to preserve and strengthen what had been achieved, Algeria had established the National Human Rights Observatory (ONDH) as an independent institution and had appointed an Ombudsman of the Republic, a system which was making a tangible contribution to rectifying the abuses of central bureaucracy. Moreover, the vitality and blossoming of civil society in thousands of non-governmental organizations (NGOs) attested to the strength of the collective effort to promote and protect human rights. Freedom of expression and opinion within the independent press had won it many international prizes and distinctions.

8. The public authorities had ensured the adoption of a clemency law and had elaborated measures for the social rehabilitation of persons who, without having committed bloodshed, had found themselves involved in terrorist acts. Measures had also been adopted and programmes launched for the material and psychological care of victims of terrorism and their families and for the reconstruction of infrastructures damaged by terrorist attacks.

9. Algeria had received a delegation from the European "troika", representatives of numerous foreign parliaments, including the European Parliament, and more than a thousand journalists from all parts of the world. They had been able to see that, although the Algerian people was the victim of terrorist groups, it had not renounced its decision in favour of pluralist democracy and human rights. Algeria was soon to welcome a panel of eminent persons, selected by the Secretary-General, for a fact-finding visit designed to enable the international community to understand the real situation in Algeria.

10. Algeria's exemplary fight against terrorism and the price paid by its people to defend democracy and human rights called for the respect and consideration and the effective solidarity of the international community.

11. The CHAIRPERSON invited the delegation of Algeria to answer the questions contained in the final list of issues (CCPR/C/63/Q/ALG/1/Rev.1).

12. Mr. HAMED ABDELWAHAB (Algeria), replying to the questions in paragraph 1, subparagraphs (a) and (b), on extrajudicial killings, said that there was one case that was currently being investigated. While it could not be termed extrajudicial killing, because there had as yet been no court decision on what had actually happened, it did involve a suspicious death in custody. The person concerned, who had been accused of murdering the Secretary-General of the Union fédérale des travailleurs algériens, had been wounded in an exchange of fire with the security forces while resisting arrest. Following his arrest, his condition had deteriorated and he had succumbed to his wounds.

13. Mr. DEMBRI (Algeria) added that it was the emergence of terrorism, and not a political crisis of human rights, that had occasioned human rights violations. His Government, which had constantly urged that international law be amended to enable it to apply to individuals with no official ties to a Government, hoped that the recently established International Criminal Court would have the power to prosecute such individuals for mass violations of human rights.

14. Algeria had always responded openly to questions about extrajudicial killings, but there was no evidence that the phenomenon occurred with any frequency. The State complied with the responsibility incumbent upon it under the Constitution to protect persons and property, but the land area was large and the security apparatus relatively small. Hence the need to respond to terrorist attacks by tightening the security net nationwide.

15. Mr. HAMED ABDELWAHAB (Algeria), replying to the question in paragraph 1, subparagraph (c), said that the Government had investigated every reported instance of massacres of civilians. As the events at Rélizane, Benthala and Sidi Rais were the ones most often mentioned in the media, he would refer to them in answering the question.

16. An investigation had been instituted within a few days of the massacre of 30-31 December 1997 at Rélizane. As no individual suspects had been identified, the investigation had been general in nature. In the case of the killings at Benthala, investigations had been launched in respect of four individuals who had been brought before a court. Three of them had been held under a detention warrant while the fourth had initially been released, but the court of appeal had overturned that decision and had ordered the person to be taken into custody. A month later, warrants had been issued for the arrest of three more persons. The investigation was continuing. Investigations had commenced two days after the killings at Sidi Rais. Four suspects had been identified but, although arrest warrants had been issued, they remained at large.

17. Those three cases were illustrative of the procedure used in every reported instance of a massacre of civilians: investigations were systematically carried out.

18. Mr. HELLAB (Algeria) said that, when the terrorists had failed in their bid to take power, they had first of all begun to assassinate members of the security forces, followed by political figures and scientists and intellectuals. Having failed to intimidate Algerian society, they had taken terrorism to the highest degree of criminality by targeting isolated groups of the population.

19. The Sidi Rais massacre had occurred during the night: the terrorists had been attending a party and had drawn knives against those present and those in a neighbouring house. The police station was located at the opposite end of the town of 10,000 inhabitants. Women and children fleeing towards the station had prevented the police from opening fire on the assailants, who had mined their escape route to prevent pursuit. At Benthala, where there was no police station, the events had likewise occurred at night and the weapons used had also been knives. At Sidi Youssef, the massacre site was at a distance of five kilometres, through a forest, from the nearest police station.

20. There was no known case of non-assistance by the security forces to the population in the event of collective killings; in fact, in the interests of self-defence, population groups in remote areas had been issued with weapons by the security forces. Since 1992, efforts had been made to increase the number of police stations in rural areas, where the number of such establishments was relatively small.

21. Mrs. KARADJA (Algeria) said that, after a massacre, the psychological and physical traumas of the population had to be addressed and the danger of a mass exodus averted. Both governmental authorities and civil society had participated in measures to restore calm and a sense of community to the population concerned. It was important that the survivors be recognized as victims so that they would be free to grieve and helped to start the healing process. Steps were taken to enable orphaned children to be looked after by their extended families; including social assistance from the State and guardianship arrangements organized by NGOs.

22. Other measures were designed to give psychosocial support to families and provide compensation on an emergency basis, e.g. for the reconstruction of housing. They related to family reunification, local security and psychological care for children in school. Emergency action of a medical or social nature was taken wherever necessary.

23. Mr. ALMAS (Algeria) said, in reply to the question in paragraph 1, subparagraph (d), that rapid intervention by the authorities to compensate survivors and the families of the victims was guaranteed. The amount of compensation paid was based on the victim's previous income or, in the case of physical injury, on the degree of disablement. Material damage was compensated for in full. A total of 7.6 billion dinars had been allocated for the purpose since 1992.

24. In all, 38,900 cases had been processed, including about 18,000 cases of death, over 13,000 cases of material damage, 7,000 cases of physical injury and about 750 cases of kidnapping by terrorist groups. As the procedure for determining the amount of compensation to be paid naturally took some time, there were special programmes designed to tide the victims over, help them to rebuild their homes, provide holidays for their children, etc.

25. Miss CHAIEB (Algeria) said that victims of terrorist attacks were immediately taken to public hospitals, where they received free treatment from multidisciplinary teams of physicians, surgeons and psychologists. The activities of such teams were supervised by the Ministry of Health and the Ministry of National Solidarity. Algeria had a special arrangement with the Cantonal Hospital in Geneva, which undertook to take up to 130 wounded a year, priority being given to children, especially amputees. A similar arrangement with the ophthalmological department of the Lausanne Hospital was about to become effective.

26. Mr. DEMBRI (Algeria) said that NGOs making allegations of extrajudicial killings in Algeria were earnestly requested to provide documentary evidence so as to enable his Government to refute the allegations. All trials for terrorist activities were public and the right of defence was assured in all cases.

27. Mr. ABBA (Algeria), replying to the questions in paragraph 2, said that, at the beginning of the emergency, the Algerian security forces had been relatively unprepared to deal with a form of violence until then unknown in the country. In the first year, the police had suffered heavy losses simply because adequate precautions had not been taken. Since then, the security forces had been enlarged and their training improved.

28. While it was true that at first the terrorists had concentrated their attacks on specific groups of the population - journalists, intellectuals, ministers of religion (both Muslim and Christian) and politicians - their attacks had subsequently been directed indiscriminately against all sections of the population, principally in isolated hamlets and some quarters of the towns.

29. Individual members of target groups were taking precautions of their own, such as changing their addresses, vehicles or routes to work, etc. Experience had shown that the best way to resist the terrorists was to ignore and defy their threats while, at the same time, taking some simple precautions.

30. Miss AKEB (Algeria), replying to the questions relating to journalists in paragraph 2, said that many journalists had indeed been killed in 1993 and 1994, the number of killings sometimes reaching two a week. Since then, however, the Government had taken special steps to protect journalists by, inter alia, providing collective housing for about 600 of them in coastal areas. As a result, the number of killings had drastically diminished in 1995 and 1996 and had since dwindled to zero.

31. Mr. HAMED ABDELWAHAB (Algeria) said that all cases involving attempts on the lives of journalists were systematically investigated, as indeed were all cases of terrorism. To date, 60 cases of killings of journalists had come before the courts; judgements had been passed in 12 of those cases and the remainder were still under investigation. Some of the cases that had been tried had led to convictions, some had been dismissed and some had ended in acquittal.

32. By way of example, he cited the case of the killing of a well-known writer and journalist where one of the accused had been sentenced to death and others to various terms of imprisonment; appeals against those sentences were pending before the Supreme Court. Likewise, the killing of the Director-General of Algeria's State television had ended in a sentence of death and several prison sentences. That trial had, however, been held in absentia and no appeal had been lodged. Another appeal was pending before the Supreme Court in the case of the killing of a television journalist, where the trial had resulted in several prison sentences. In a case involving the death of a photographer employed by the National Press Agency, the accused had been acquitted and the Office of the Public Prosecutor had lodged an appeal which was currently before the Supreme Court.

33. The appeals mechanism operated normally in trials of persons accused of terrorist acts as it did in all other cases. Most of the death sentences had been pronounced in absentia. If a person who had been tried in absentia presented himself in court or was arrested, the sentence and the entire proceedings were automatically annulled and a new trial was held.

34. Mr. SOUALEM (Algeria), replying to the questions in paragraph 3, said that his Government had provided detailed answers to the 49 allegations of enforced disappearances addressed to it by the Working Group on Enforced or Involuntary Disappearances in 1997, as well as to the two allegations received from the Working Group in 1996. The Working Group had not formulated any

supplementary questions, evidently considering the Government's replies sufficiently clear. Some of the persons alleged to have disappeared had never left their homes; some were in prison; some had been killed while resisting the security forces; and some had gone underground and joined terrorist groups. While it was regrettable that the Working Group's machinery was being abused, his Government would continue to cooperate and to provide the Working Group with all available information.

35. Mr. HAMED ABDELWAHAB (Algeria), replying to the question in paragraph 4, said that there had been no deaths of persons in pre-trial detention. As for deaths in prison, an autopsy was always performed if the death was in any way suspicious and, if the suspicion was confirmed, the file was forwarded for investigation to the State Prosecutor's Office. With respect to paragraph 5, he said that the total number of death sentences imposed during the period under review was 1,991, 287 of them as a result of an adversary judgement and the rest by a contumacious or default judgement. No death sentences had been carried out since September 1993.

36. Mr. DEMBRI (Algeria) said that the decision to suspend the execution of death sentences had been taken on 13 October 1993.

37. Mr. ZERROUKI (Algeria) said that the state of emergency, initially introduced for a period of one year by Presidential Decree in 1992, had been extended indefinitely on 6 February 1993 because of the persistence of terrorist criminal activity. The decision to proclaim it was based on a provision of the Constitution. The state of emergency did not entail the abolition of citizens' rights in Algeria; five multi-party elections and some 15,000 political meetings had been held since its introduction, there were many public associations engaging in lively activities, the curfew had been lifted in several wilayas and a number of administrative detention centres had been closed down. The state of emergency would, of course, be lifted as soon as circumstances permitted.

38. In reply to the question as to why the Secretary-General of the United Nations had not been notified of the extension of the state of emergency, he said that, at the time the decision had been taken, Algeria had had no elected Parliament.

39. Mr. HAMED ABDELWAHAB (Algeria), replying to the question contained in paragraph 7, said that the Algerian system did not provide for compensation to persons who were acquitted or released. The only case in which compensation could be claimed was when a convicted person was declared innocent by the Supreme Court after a review of the trial. That rule applied to both general and special courts.

40. Both the Constitution and the Code of Criminal Procedure provided that pre-trial detention was an exceptional measure that in no way affected the presumption of innocence. The maximum duration of such detention, when ordered by the examining magistrate or the indictment division, was 20 days for a misdemeanour punishable by less than two years' imprisonment, four months, renewable for a further four-month period, in the case of an offence, and four months, renewable for two four-month periods, in the case

of a crime. Under exceptional circumstances, the examining magistrate could apply to the indictment division for a third four-month extension in criminal cases.

41. Administrative detention was a measure without criminal implications and persons affected by such measures could apply for release to the appeals councils set up by a ministerial order in 1992. The councils were composed of representatives of the authorities and of civil society. Persons in administrative detention could receive visits of lawyers and family members and enjoyed freedom of correspondence and freedom of religious practice. Following the closure of the custody centres, the vast majority had returned to their former workplaces. In some cases, employers had been ordered by the courts to reinstate former employees, with back pay for the period spent in custody.

42. Mr. ZERROUKI (Algeria), referring to paragraph 8 of the list of issues concerning legitimate defence groups, said that the scale of terrorist activity had prompted citizens themselves, especially in isolated areas, to seek authorization for the establishment of self-defence structures. The authorities' response had taken the form of an Executive Decree issued in 1997, which provided for the establishment of legitimate defence groups subject to prior authorization by the local prefect, who acted on the advice of the security services.

43. The groups were not allowed to take positive steps to neutralize terrorist forces and could act only in self-defence. Their members were volunteers and their leader was sometimes, but not always, a law-enforcement officer. They received no remuneration but the State occasionally offered assistance in needy cases. The local sub-prefect was responsible for supervising their activities, which were confined to a specific geographical area. Any member who failed to obey orders could be expelled from the group and, if necessary, prosecuted.

44. Mr. HELLAB (Algeria) said that legitimate defence groups had been established exclusively for the purpose of protecting lives and property, especially in remote villages. Their members did not receive special training since they did not form part of the security forces. The weapons they used were very simple, mostly hunting rifles that required no special permit apart from a declaration of ownership. The rules governing the groups' activities were the same as those governing personal self-defence. They were accountable to the State authority which had constituted them and not to any political party or social group. They were kept under constant supervision and there had been convictions for abuses.

45. Mr. HAMED ABDELWAHAB (Algeria) said that a total of 275 members of the security forces and of legitimate defence groups had been tried and convicted. The charges had ranged from murder and involuntary manslaughter to infliction of bodily harm, burglary, violence and assault, and destruction of property. The penalties had ranged from the death penalty and life imprisonment to short terms of imprisonment and suspended sentences. Most offenders belonged to the communal guard services and the legitimate defence groups. A smaller number

of offenders were members of the security services. All complaints of abuse of authority were systematically investigated. They generally consisted of allegations of ill-treatment, arbitrary detention and murder.

46. Mrs. ZERROUKI (Algeria), replying to the question in paragraph 9 of the list of issues, said that incommunicado detention did not exist in Algeria. Article 47 of the Constitution stipulated that nobody could be prosecuted, arrested or detained except as provided by law, and article 51 of the Code of Criminal Procedure concerning police custody required the judicial police to inform the Public Prosecutor of all detentions and to allow detainees to communicate with their families. Article 102 of the Code of Criminal Procedure concerning pre-trial detention allowed the examining magistrate, in the interests of confidentiality of the investigation, to prohibit communications, except with defence counsel, for a maximum of 10 days.

47. Mr. HAMED ABDELWAHAB (Algeria), replying to the questions in paragraph 10 of the list of issues, said that torture was prohibited by article 110 of the Penal Code which stipulated that anybody who inflicted physical or mental suffering on a person in order to obtain a confession was punishable by imprisonment. No case of torture within the meaning of the Penal Code or of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been brought to the attention of the judicial authorities in Algeria. There had, however, been cases of abuse and ill-treatment. It was for the examining magistrate and the trial judge to decide whether the evidence available warranted prosecution of reported cases of ill-treatment.

48. Mr. EL SHAFEI said that, after considering Algeria's initial report in March 1992, the Committee had expressed concern at the suspension of the democratic process, the large number of detainees, lack of respect for due process, especially before military tribunals, the ill-treatment of detainees, restrictions on rights to freedom of opinion and expression, and insufficient respect for article 6 of the Covenant, which stipulated that States parties which had not abolished the death penalty should reserve it for the most serious crimes (CCPR/C/79/Add.1, para. 5).

49. In its second periodic report, Algeria had responded in detail, in paragraphs 28 to 78, to the questions raised by the Committee in connection with its initial report. It had clarified such issues as offences carrying the death penalty, respect for due legal process and restrictions imposed during the state of emergency and as a result of the suspension of parts of the Penal Code. However, the report failed to provide a clear picture of the sombre recent developments in Algeria which had called for firm action to prevent the situation from deteriorating.

50. He stressed that the members of the Committee were independent experts who did not represent their respective Governments. Their sole aim was to ensure compliance with the Covenant and to conduct a dialogue with the authorities of the State party.

51. It was quite normal that the Committee should ask the Algerian Government for a special report on the impact of recent events on the rights of citizens, particularly the right to life, the right not to be subjected to

torture, the right to security of person, the right to a fair and public trial and the right to freedom of expression. However, as Algeria's second periodic report was due, it was agreed that the two reports should be combined. The response by the Algerian authorities at such short notice was commendable.

52. He drew attention to the conclusions and recommendations of the Committee against Torture following its consideration of Algeria's second periodic report in November 1996 (A/52/44). The Committee had expressed concern at the rising incidence of torture since 1991, although it had virtually ceased between 1989 and 1991. It noted that, under Decree No. 92/44 of 9 February 1992, the Minister of the Interior or his nominee could order administrative placement in custody centres with no judicial supervision and that custody could be extended to 12 days. Moreover, torture was not properly defined under Algerian law.

53. Recent events in Algeria had led to many disappearances - at least 2,000 according to some reports - and the families concerned were usually unaware of the identity of the kidnappers and unable to establish whether their relatives were alive or dead. They had apparently been unable to obtain from the authorities any statement concerning the fate of the missing persons. Relatives who had attempted to submit petitions to representatives of the United Nations and the United Nations Educational, Scientific and Cultural Organization (UNESCO) in September 1997 had been prevented from doing so and some of them had been detained by the police. According to the delegation of Algeria, compensation had been paid to the families of those killed by terrorist acts. He asked for further details concerning those cases and concerning any progress made in the investigation of cases of missing persons.

54. Mr. KRETZMER said that the report contained a wide range of information concerning laws and legal instruments but very little about practical developments in recent years. Nobody would realize from the report that, according to some estimates, between 40,000 and 80,000 civilians had been killed in Algeria during the past five years and that there had been serious allegations of systematic torture, secret detention and disappearances. Official denials of such reports would be credible only if Algeria opened up its society to outside organizations, especially human rights bodies, so that they could furnish independent information. Unfortunately, restrictions had been placed on the entry of such organizations, especially during the last few years. The Committee also required detailed information from the authorities regarding the investigations of alleged human rights abuses.

55. The information given by the delegation in reply to the questions in paragraph 1, subparagraph (c), of the list of issues was insufficient. In the case of the massacre which had taken place in Sidi Rais on 28 August 1997, the delegation had stated that, when the terrorists began shooting, the crowds had fled towards the police station at the other end of town, thus blocking the road and preventing the police from reaching the scene. However, according to the Committee's information, there were army barracks very close to the site. Why had the army not been called in to surround the town in order to ensure that those responsible for the atrocities were unable to escape?

56. More importantly, he wished to know what type of investigation had been carried out after the incident, and by whom. From what had been stated, it

appeared that, in such cases, there was reliance on a judicial investigation to examine allegations against those identified as responsible. It would seem, however, that a much wider investigation was called for into the conduct of the security forces, in order to enable guidelines to be laid down for the future.

57. The delegation had stated that, in the case of the Benthala massacre, there was no police station in the town. However, there were five different outposts of the military and security forces in the vicinity and, according to witnesses, units with armoured vehicles had been stationed outside the village. There again he would like to know what kind of investigation had been carried out.

58. Lastly, in the case of the events in Sidi Youssef, the delegation had stated that the nearest police station was five kilometres away. There were, however, army barracks in the area and it had been alleged that the army had refused to act. Again, it was important to know what kind of investigation had been launched.

59. Regarding paragraph 1 (b) of the list of issues, the Committee had been told that there had been only one case of extrajudicial killing. He was somewhat surprised to hear that that case was still under judicial investigation and that the results had not yet been published. There were, however, other cases that had come to the Committee's knowledge.

60. In one such case, a young man of 17 years of age had been taken away from his school in Algiers by members of the security forces on 30 January 1996. Two weeks later, his father had found his body in the mortuary. The staff of the school had been visited by the security forces a few days before the young man's arrest and questioned about him. Had any investigation been carried out into the circumstances of his death?

61. In another case, an individual had been arrested on 3 June 1994, and no details had been supplied regarding his whereabouts despite inquiries by relatives and by NGOs. A peculiar feature of that case was that, in early 1996, the Algerian authorities had informed the United Nations Special Rapporteur on extrajudicial, summary and arbitrary executions that the man had been arrested by the security forces on charges of terrorism, and had been killed in July 1994 while trying to escape. It was most curious that no information regarding him had been released until 1996.

62. Turning to the issue of disappearances (paragraph 3), he noted that, in its annual report for 1996, the Algerian National Human Rights Observatory (ONDH) stated that the conditions of incommunicado detention laid down in the Constitution and in the Code of Penal Procedure should be strictly respected, and that it was time to put an end to the use of places of detention which were outside the control of the law. That implied that such places of detention did, in fact, exist.

63. In a further case, a doctor had been abducted when driving home from his hospital on 8 July 1997, and held for two weeks before being released. No explanation had ever been given for his detention.

64. Concerning the question of torture (paragraph 10), the information given by the delegation had related to investigations into specific allegations. He was more concerned with the question of whether torture was used in Algeria on a systematic basis. The Committee had been informed that 45 persons currently being treated in an institution for torture victims in Europe asserted that they had been subjected to torture in a variety of facilities in Algiers. He would like to know what system the Government had, not so much for investigating such allegations after the event, but rather for ensuring that investigation procedures in detention centres respected the rights of individuals under the Covenant and were in accordance with Algerian law.

65. Mr. ZAKHIA said that, as a general rule, when a State was threatened by armed uprisings, only monitoring by an independent and impartial authority could effectively prevent human rights violations. The Committee was thus interested in learning who was currently carrying out investigations into the massacres that had taken place in the country, and what sort of investigations they were. In the light of the gravity of the situation, and the public's confusion in the face of repeated human rights violations by members of the security forces, he wondered why the ONDH and the Ombudsman of the Republic, as well as NGOs, had not been invited to monitor the investigations, notably with regard to the behaviour of the security forces and of the authorities, in general. In addition, international human rights bodies ought to be allowed into the country to make their own inquiries: that would give greater credibility to the Government's efforts in the eyes of the world.

66. Mr. KLEIN said that, while the report gave answers to a number of the questions asked in 1992, he found it very disappointing that only a single page was devoted to rights under articles 6 and 7 of the Covenant. No one would deny that Algeria's population was currently the target of serious and inexcusable acts of terrorism. However, paragraph 102 of the report stated that, under a new definition, terrorism included acts designed "to hinder traffic or freedom of movement on the roads and fill public places with crowds", or "to hinder the functioning of public services". That definition seemed to him unduly broad, and he would welcome more details.

67. It was important to distinguish between a State party's duty to respect the provisions of the Covenant and its duty to protect its citizens from violations of their rights by external forces. Attention was drawn to that distinction in General Assembly resolution 52/131 of 12 December 1997, which Algeria had supported. He was particularly concerned by cases of enforced disappearance involving the police, the gendarmerie, or anti-terrorist forces. In view of the huge number of cases reported, he was not convinced by the explanations given by the delegation for the phenomenon. Not all cases had been seriously investigated: many families seeking information had received no answer, and had themselves been treated like criminals. The report of the Working Group on Enforced and Involuntary Disappearances, published in January 1998, stated that there was an increase in the number of disappearances in Algeria. He did not think it proper for the delegation to respond to that very serious problem in such a cavalier way. Did a relative of a disappeared person have the right to go to court and oblige the Government to indicate what steps had been taken to ascertain the person's whereabouts?

68. The Committee had been told that there was no human rights crisis in Algeria. If thousands of people were being killed by forces other than those of the State, the country was surely facing a very serious human rights crisis. Since Algeria had not succeeded in dealing with that crisis on its own, he wondered whether it would be prepared to avail itself of the advice and support of other States parties to the Covenant.

69. Mr. El Shafei, Vice-Chairperson, took the Chair.

70. Ms. MEDINA QUIROGA said she was surprised to note that, in respect of article 4 of the Covenant, the report said nothing about the consequences of the 1993 extension of the state of emergency. Nothing was said either with regard to the human rights implications of Decree No. 92-03, which had created special courts to try cases of terrorism where, for instance, the right of appeal was confined to matters arising from points of law. She fully endorsed what Mr. Klein had said regarding the new definition of terrorism, which seemed to her to violate the basic principles of criminal law.

71. She found it very difficult to accept the report's omissions in respect of article 6 of the Covenant, particularly in view of the many reports of massacres by armed groups, deaths in custody, and disappearances. She wished to know whether the role of the security forces stationed near the sites of the massacres had been investigated, and whether any lists of victims had been published.

72. The reports of enforced disappearances in Algeria were similar in all respects to those that had been received over the years from Latin American countries. The Working Group had been informed of 49 cases of disappearance in which no information had been offered to the families by the Algerian authorities and she would like to know how many of those cases had been investigated. Article 7 of the Covenant prohibited not only torture, but also cruel, inhuman or degrading treatment or punishment and she wondered why it had not been possible for international human rights bodies, including the International Committee of the Red Cross, to visit prisons.

73. It had been reported that civil militias, or legitimate defence groups, had confessed to being motivated by revenge in their activities and she would like to know what the Government intended to do to remedy that situation.

74. Ms. Chanet resumed the Chair.

75. Lord COLVILLE said that, while he commended the report on having responded to questions left unanswered from 1992, he joined in regretting the total lack of information about the legitimate defence groups. It was most alarming that members of a local community should be armed and given the freedom to use their arms in self-defence. Unless such groups had adequate professional leadership, there was a danger that they would run out of control. The Committee had been told that the groups were not trained: without training, how could they judge what constituted proportionate self-defence, or how far they could go in pursuing attackers? He would appreciate explanations from the delegation on how those problems would be dealt with.

76. He shared the views of earlier speakers with regard to the definition of terrorism set out in paragraph 102 of the report. Under that definition, any act whatsoever which, in the opinion of the prosecutor or the police, had been carried out with any of a wide range of different intentions would constitute terrorism. He considered that that formulation was so broad as to constitute an infringement of articles 9 and 14 of the Covenant.

77. While he noted with admiration Algeria's achievements in terms of, for instance, return to the electoral process and freedom to form political parties, the problem was that terrorists would not participate in that process because they refused to accept any part of the apparatus of the State. In the end there would have to be negotiations. Faced with the prospect of interminable threats to the right to life and other rights under the Covenant, he wondered whether the delegation could see any way forward to some kind of negotiated settlement with the terrorists.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1682nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Ms. MEDINA QUIROGA
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Algeria (continued) (CCPR/C/101/Add.1; CCPR/C/63/Q/ALG/1/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Algeria resumed their places at the Committee table.

2. Mr. LALLAH drew attention to a number of new and positive developments, particularly the cooperation that currently existed between the Algerian authorities, the United Nations system and several treaty bodies. He wondered whether it might not be possible to expedite the establishment of similar links with other United Nations mechanisms, especially the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, both of whom had expressed a desire to travel to Algeria in order to discharge their mandate fully.

3. The Algerian delegation's claim that there was no human rights crisis in the country was dubious, and it was hard to go along with the idea that the electoral process could be suspended without interrupting the democratic process as well. It must be admitted that Algeria was experiencing a very grave crisis that had affected the fundamental rights enumerated in the Covenant, notably the right to life, liberty, personal security and protection against torture. In its report, the State party had tended to deny that the authorities bore any responsibility for the human rights violations perpetrated in Algeria; such an attitude was incompatible with the Algerian Government's obligations under the Covenant, since a State was responsible not only for the behaviour of its officials but also for any act which took place in its territory.

4. The delegation had said that 275 State officials had been sentenced in court for abuses of authority, including homicides. It would be useful to have a more detailed account of the circumstances in which such abuses had taken place, and to know precisely what charges those individuals had been tried on. Furthermore, replying to one of the Committee's written questions, the delegation had indicated that a number of persons had been arrested and convicted following the massacres in the villages of Sidi Rais, Sidi Youssef and Benthala. He would like to know who had been responsible for the massacres, precisely what charges had been brought against them and whether they had been tried in public.

5. With reference to the massacres, army units had apparently been present in the vicinity and could therefore have protected the villagers. The fact that no such assistance had been given constituted a clear violation by the State party of obligations freely entered into under the Covenant. Moreover, a major inquiry should have been conducted to determine whether the victims could have been helped in any way. Since the State party had also mentioned the obstacle posed by landmines, the Committee was bound to ask whether any mine-clearance operations had been carried out in the areas concerned. The Committee had also received many reports of disappearances in Algeria. In

that connection, it behoved the State party to recall that it had a duty to inform families of the fate of all persons held in detention. In addition, it was extremely important to determine precisely the number of people who had disappeared without trace.

6. Mr. PRADO VALLEJO said that, since the consideration of the previous periodic report, the situation in Algeria had steadily deteriorated. Algeria was experiencing a grave crisis which affected not only human rights but also humanitarian law. Serious human rights violations were being committed without any inquiries being launched, and those responsible had gone unpunished. Moreover, the police were resorting to excessive use of force in contravention of international standards. There was no denying that the people of Algeria were caught up in a wave of terrorist violence, but at the same time there was no excuse for turning a blind eye to terrorist acts perpetrated by the State, for example the many executions carried out on the orders of the security forces. Given the circumstances, it should be stated loud and clear that the international community considered it unacceptable that regular forces should copy the methods used by terrorists in order to combat violence. Nor could there be any justification for the establishment of self-defence squads which were nothing more than State-armed paramilitaries operating on the fringes of the law.

7. Ms. EVATT noted with regret that the State party had failed to provide adequate information on the real situation in Algeria either in its report or in the delegation's oral statement. While it was true that armed terrorists had committed horrific acts in Algeria in recent years, no terrorist act could justify State actions that violated human rights. In addition, the delegation had been evasive on the topic of women as terrorist targets, when in fact many women had been raped and murdered as a result of terrorist actions. It would be helpful to know whether such crimes had been investigated and whether the perpetrators had been brought to justice. Furthermore, women had been abducted and forced to enter into temporary marriages. What action were the authorities taking to combat that practice? It was also unclear whether abortion was prohibited even when a women had become pregnant as a result of being raped. The Committee had received numerous reports that the army had failed to intervene to stop massacres in areas taken over by the Islamic Salvation Front. It seemed strange that the authorities had been unable to ensure the necessary level of protection for the victims of the massacres, yet they had experienced no problems in organizing perfectly safe elections.

8. Mr. POCAR said that, as far as he could understand, the state of emergency, the promulgation of which was governed by the very strict rules stipulated in article 4 of the Covenant, had served as a pretext for every kind of abuse in Algeria. For example, an amendment to the provisions of the law defining terrorism currently empowered the authorities to target any public or private behaviour. All the indications were that the very foundations of the rule of law were being threatened. While it was quite legitimate to combat terrorism, that struggle should be waged in strict observance of the law.

9. It was also necessary to highlight the question of forced disappearances, which constituted a flagrant violation of the rules that must be observed when proclaiming a state of emergency. At stake was the right to

recognition as a person before the law, as embodied in article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights. Thus, once a disappearance had been reported, the authorities had a duty to launch an in-depth investigation to find the missing person. In that regard, the Algerian delegation had mentioned 49 missing-person cases which had been brought to the attention of the authorities in connection with the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1998/43). But the Algerian Government had only provided information on 27 of those cases. Accordingly, he wished to know whether the cases on which the authorities had not provided any further details had been investigated, and whether those responsible had been arrested and brought to justice. It was essential that such acts did not go unpunished.

10. Mr. BHAGWATI said that Algeria had ratified most of the international human rights instruments and was cooperating with the international community by agreeing to receive a high-level mission under the auspices of the United Nations. It was unclear whether the High Committee of State established by the Government in June 1991 was still in existence. If so, it would be interesting to know something about its membership and its activities. Clarification was also required on whether the special courts established pursuant to the law on terrorism and subversion still existed. The state of siege proclaimed on 9 February 1992 for a duration of one year and subsequently extended indefinitely without a vote in the National Assembly surely constituted a violation of both the Algerian Constitution and article 4 of the Covenant. It would be helpful to know whether an independent mechanism existed to deal with allegations of torture. It was highly probable that individuals held in detention were indeed tortured in view of the considerable number of convictions based on a confession by the defendant. It would also be useful to know whether there was a regulation stipulating that a person under arrest should have the assistance of a lawyer, and that a detained person's family should be informed of his arrest and whereabouts. More details should also be given on the composition, functions and activities of the National Human Rights Observatory. According to a number of NGOs, over 1,000 disappearances were attributable not only to armed groups but also to the security forces, which represented a grave threat to civil society and respect for the law. The State should take appropriate measures: for example, it should compile a register of persons in detention, which would be periodically checked by an independent body responsible for the inspection of prisons and detention centres. Finally, according to information received from NGOs, individuals prosecuted for public order offences were allegedly tried by military courts. If that was true, it was a disquieting development because civilians should not be tried by military jurisdictions.

11. Ms. GAITAN DE POMBO welcomed the cooperative attitude of the Algerian Government in allowing high-level missions from the European Union and other international authorities to visit the country in order to observe what was happening. The authorities should allow NGOs similar access.

12. The delegation had dwelt on the transition problems which Algeria had experienced since 1989, particularly those connected with the establishment of new institutions. However, the complex nature of the transition and the many manifestations of violence that had characterized it certainly did not justify the claim that there was no human rights crisis in Algeria. What level of

violence would have to be reached before one could speak of a human rights crisis? It seemed that Algeria was experiencing not only a human rights crisis, but a serious humanitarian crisis as well, given the way in which the minimum standards of international humanitarian law were being outrageously violated by groups of extremists who treated the civilian population as a terrorist target. The international community and bodies such as the Human Rights Committee should take note of the fact that violations of human rights and humanitarian standards were being perpetrated by State officials and other elements outside the framework of the State, but legally speaking the fact remained that the State was a subject of international law and it was primarily incumbent on the State to guarantee respect for the fundamental rights embodied in the Covenants and the international instruments it had ratified. It was also right and necessary to prosecute those who had violated minimum standards of humanitarian law and ensure that they were tried with due firmness.

13. The role played by private armed groups or militias was also disturbing because it was dangerous to encourage the establishment of armed civilian groups, even with the well-intentioned aim of protecting the right to self-defence. Normally it was the State which had a monopoly on the use of force; when it was prevented from exercising that right, its key role of exercising authority and guaranteeing the safety of citizens was impaired. But even more worrying was the fact that the civilian population had become an unwilling target for the military, resulting in reprisals and revenge killings. She had also noted that the murders of up to 20 journalists had been thoroughly investigated and the killers identified. The delegation should provide information about the cases of other journalists who had been murdered.

14. Mr. BUERGENTHAL endorsed many of the concerns expressed by other members of the Committee and noted that the report's treatment of the application of articles 5, 6, 7, 9, 12 and 14 of the Covenant was purely formalistic; the real situation in Algeria had been barely touched on. The reality was that the Government had been forced to engage in a struggle against a pernicious and ruthless brand of terrorism, and it was a universally acknowledged fact that terrorism was one of the worst enemies of human rights and was very difficult to combat. He would have liked to know more about how the Government was striking a balance between the exigencies of the struggle against terrorism and Algeria's international obligations with respect to the protection of human rights. The lack of such information made it difficult to engage in genuine dialogue because the Committee could not really understand the Algerian Government's problems. In the report, for example, the title of the section relating to article 6 was "Capital punishment", whereas the article in question actually dealt with the right to life and the protection of that right was precisely one of the most serious problems facing Algeria.

15. On the question of disappearances, he would like to know whether the Algerian police and other bodies were obliged to keep a register of persons whose families had reported their disappearance or the fact that they had not been seen again. More details should be provided on what kind of investigation the police were supposed to carry out following a report that somebody had disappeared. The question whether the Algerian State could really act as the guarantor of its security agencies in the context of the fight against terrorism also required clarification. The delegation's claim

that there had been no cases of torture of detainees seemed dubious when several thousands of Algerians had turned up in West European rehabilitation centres with torture-related injuries. Had the Government launched inquiries into those cases? In addition, it was unclear whether the International Committee of the Red Cross (ICRC) had been allowed access to prisons and detention centres in Algeria and if it had, whether any visits had been made. He would also like to know whether the Government had agreed to allow international observers to monitor the trials of persons being prosecuted for acts of terrorism in Algeria.

16. He would like to believe that all the massacres which had been committed were attributable to terrorist organizations and not to groups linked in some way to the State authorities. In any event, the manner in which the investigations had been carried out left much to be desired. The Committee had received insufficient information about the measures taken to investigate the massacres and put a stop to them. The delegation should cite specific examples of individuals and organizations which had been prosecuted for acts of terrorism and also list measures which the Government had either taken or intended to take to prevent the massacres from continuing.

17. Mr. SCHEININ stressed that the Algerian Government had a responsibility to ensure the protection of the human rights embodied in the Covenant. In that connection, Algeria should take priority measures to deal with the question of disappearances. The Committee had heard nothing about any such measures and must therefore remind the State party of its obligations in that regard. The State could agree to receive special rapporteurs appointed by United Nations bodies or the Working Group on Enforced or Involuntary Disappearances; their investigations would make it possible to ascertain the truth about the disappearances. Such an approach should complement domestic-order measures such as the duty of all detention authorities to keep a register and allow detainees to contact their families. Unless the Government took such measures, its responsibility for the widely institutionalized phenomenon of disappearances could never be ruled out.

18. On the question of capital punishment, the delegation had cited a figure of approximately 2,000 death sentences. Most of those convictions had been obtained in the absence of the accused; that raised problems in connection with article 6 of the Covenant, which prescribed strict observance of all legal procedures when a person was being tried for a capital offence. Besides, the Committee had learned from other sources that the right to a fair trial had not been fully respected in such circumstances. Given the approximate figure of 2,000 death sentences, he would like to know how many convicted persons were being detained by the authorities and how many had died while in detention. Persons convicted of capital offences had allegedly been executed before exercising their right of appeal, either on the pretext of attempting to escape or during a confrontation in the vicinity of their detention centre. The delegation should indicate precisely how many persons sentenced to death in absentia had died, because reports had been received of cases in which such persons had subsequently been killed or executed in skirmishes. Those cases might be classified as summary, arbitrary or extrajudicial executions. Finally, since Algeria was a party to the Optional Protocol to the Covenant, persons sentenced to death in Algeria had the right to send a communication to the Human Rights Committee, which would then

proceed to examine the essential question whether the right to a fair trial had been observed in their case. It was disquieting to note that the Committee had received no such communications. He would therefore like to know whether condemned individuals being held in detention were informed of the possibility of sending a communication to the Committee.

19. Mr. DEMBRI (Algeria) said that his country had submitted its initial report in 1992; the second periodic report submitted in 1998 contained replies to some of the unanswered questions raised by the previous report as well as information regarding follow-up to the Committee's recommendations. Committee members would thus have noted that the Committee of State no longer existed in Algeria; it had been replaced by an institutional system based on universal suffrage, as evidenced since 1995 by the restoration of the electoral process and the election of the President of the Republic by universal suffrage in a climate of pluralism monitored by international observers. Thus the aim of the 1998 report had been to portray present-day Algeria and the elements chosen to build a modern rule-of-law State, while at the same time referring to the entire spectrum of human rights embodied in the articles of the Covenant. His Government recognized those rights, and its acceptance of them was reinforced by the fact that it had also subscribed to the provisions of the Optional Protocol. It was nevertheless true that the report currently before the Committee could not portray every facet of the reality of modern Algeria. Aware of that fact, his delegation had therefore come prepared to answer all the questions on the list of issues which had been sent to it.

20. In enabling the Committee to gain an accurate picture of the situation in the country, his delegation had encountered the methodological problem posed by allegations. Documentary sources were known quantities, namely NGOs and the State's official sources. The purpose of the debate between the Committee and the delegation should be to scrutinize critically the sources that had been used, in order to make the transition from the realm of allegation to that of fact. At that point differences of opinion might come to light, because counter-arguments had not been applied to those documentary sources. His delegation would, however, agree to examine the evidence or allegations that had been adduced in order to avoid a situation in which conjecture was often accorded factual status.

21. Much had been said and written about Algeria. In January 1993, for example, the United States Department of State had predicted that terrorists would seize power in Algeria within 100 days, and that the rule-of-law State would reach the point of total collapse. Today his delegation could proudly announce that terrorists had not seized power, nor had they been able to foist themselves on the Algerian people. Algerians had accepted the necessary sacrifices, even at the cost of their lives, in order to wage war on terrorism with no means of protection other than the rifles which had been issued to them for self-defence purposes. In that connection the word "militia" had been used, but the rifles issued to citizens for self-defence were simply a licence to bear arms; the fact that citizens were organized at the district or village level did not constitute a militia.

22. The people's desire to rebuff terrorism had been expressed in 1992 as evidenced by the presidential and parliamentary elections which had been monitored by international observers. The State had put in place the

necessary monitoring bodies to protect human rights. The report had also mentioned the monitoring function of the two houses of parliament. In addition, the National Human Rights Observatory and the Ombudsman had been active in the field of human rights and their own reports indicated the extent of their involvement. Deliberate abuses had never been authorized, and everything that had been officially approved was described in the report, which attested to the will of the Algerian authorities to carry out the duties of a rule-of-law State, observe the provisions of the Covenant and protect the population.

23. His Government's actions had perhaps not always been clearly understood. That was why his delegation intended to provide further details, prefaced with the observation that it rejected the use of the term "disappearances" to describe what were suspected abductions. Attempts had been made to blame the State for abductions carried out by armed groups and terrorists. The press was full of stories about young women who had been raped and abducted, young marriageable women who had been abducted, raped and compelled to enter into what one Committee member had called "temporary marriages", a term that was irreconcilable both with the reality of Algerian customs and with Algerian religious culture. A figure of 120,000 disappearances had even been mentioned. The official figure transmitted to the People's National Assembly in March 1998 was 26,535. The civil status registers in which deaths, autopsy reports and other information were officially recorded were absolutely trustworthy and there was absolutely no reason to doubt their authenticity. Thus, figures adduced without any documentary evidence could not be trusted.

24. Regarding the clemency law and the search for a solution which was in harmony with the underlying goal sought by the country, i.e. negotiation and national dialogue, there was no question of jeopardizing the republican structure of the State or results obtained by universal suffrage. In any event, it was still possible to form political associations and engage in national dialogue on the basis of respect for the rule of law. As a result of that process of national dialogue, the National Salvation Army had already laid down its arms, and it was hoped that, with the support of the international community, Algeria would soon be able to establish a politically stable and economically prosperous regime that would respect the undertakings that had been made to European countries and those of the Mediterranean area.

25. The CHAIRPERSON thanked the Algerian delegation for all the replies it had given to the questions on the list of issues. Members of the Committee were frank in their comments and, of course, relied on information supplied by NGOs and other United Nations bodies, such as the Working Group on Enforced or Involuntary Disappearances. The delegation would have the opportunity to put forward counter-arguments on behalf of the Algerian Government.

26. Mr. ABDELWAHAB (Algeria) said that the Committee of State and the special courts had ceased to exist in 1995. Regarding the definition of terrorism, article 97 bis of the Penal Code stipulated that "An act of terrorism or subversive act shall be deemed to be any act directed against the security of the State or the integrity of its territory, or the stability or smooth operation of institutions through any action intended, inter alia, to exploit impediments to traffic or freedom of movement caused by riotous assembly". It obviously followed that any person who impeded traffic without

the ultimate intention of breaching State security was guilty of an ordinary offence and would be tried by a criminal court: an impediment to traffic did not necessarily constitute an act of terrorism.

27. With reference to the amendments to the Code of Criminal Procedure, a person could be held in police custody for 48 hours. That period could be extended once only, following a decision by the Procurator of the Republic. In terrorist cases, police custody could be extended up to a maximum of 12 days, the reason being that terrorists often committed criminal acts with the support of worldwide networks and it was impossible to make the necessary inquiries without holding the suspect in police custody for an adequate period. Furthermore, in criminal cases, a convicted person did not have the right of appeal; instead he was entitled to an application for judicial review in order to seek redress for errors which might have been committed by the lower court, and any such remedy was of course suspensive.

28. Regarding judicial action following massacres, his delegation had already stated that inquiries had been conducted into each of the cases concerned, and in at least three cases the perpetrators had been identified. Moreover, the Algerian judicial system was a modern one based on the principle of the presumption of innocence, availability of judicial remedies and transparency of procedure.

29. Ms. Medina Quiroga took the Chair.

30. Ms. BOUABDELLAH (Algeria) said that in every Algerian prison there was, of course, a register with details of every person who entered the prison, and that the Procurator of the Republic had access to that register. The law was very clear on that point: nobody could be imprisoned without a judicial warrant and any case of false imprisonment or arbitrary detention was severely punishable under the Penal Code. Likewise, the Code of Criminal Procedure laid down strict procedures which must be applied in respect of police custody. At the initial stage, a supervisory function was exercised by a registrar who kept a detailed record of the evidence given by suspects during police interviews, and that record was subsequently made available to the Procurator of the Republic.

31. On the matter of confessions allegedly obtained under torture, article 110 of the Penal Code clearly stated that they were inadmissible and that any person obtaining a confession by such means was liable to prosecution. Incidentally, appeal proceedings did not exist in criminal cases because the Algerian system was based on the principle of people's justice and only the Supreme Court could quash a verdict handed down by a people's jury if there was some doubt as to the accused's guilt. Moreover, legal assistance was mandatory in criminal cases and a criminal court could not try a person who had no legal representation. By contrast, legal representation was not required for minor offences, but the accused could, if he so wished, request that a lawyer be present and, if he could not afford one, ask for counsel to be appointed by the court.

32. The law that made it an offence to reveal the identity of judges, quite apart from never having been applied, had been repealed and, in any case, had been framed with the press in mind, since press coverage could endanger the

lives of judges. Finally, contumacious judgements did exist in the Algerian legal system and were very strictly enforced. Thus, if an accused person failed to appear before the court, efforts were made to locate him; if he still could not be found and the investigating judge, upon inquiry, concluded that sufficient charges could be brought, the case file was referred to three irremovable ordinary-court judges who then delivered their judgement.

33. Ms. Chanet resumed the Chair.

34. Mr. ZERROUKI (Algeria), referring to the questions on the state of emergency, said that the Committee should be aware of the conditions in which it had been proclaimed back in 1992 and subsequently extended the following year. That exceptional procedure, which had aimed to maintain the stability of institutions and re-establish public order when traditional mechanisms had become inoperative, had been adopted in 1992 at an extremely serious time characterized by unheard-of violence perpetrated by groups of terrorists who were endangering people's lives and the security of their property. The nature and objectives of the violence were reminiscent of a civil war. Women, children, intellectuals, journalists, judges and religious believers of all faiths had become targets; one of the terrorists objectives had been the destruction of the country's social and economic infrastructure. The presidential decree proclaiming the state of emergency had been duly substantiated, and the text of the decree had specifically mentioned the serious and persistent breaches of public order which had occurred all over Algeria, the threats to the stability of institutions, and the serious and repeated violations of the safety of citizens and civil peace. The state of emergency had operated in conjunction with several regulations which, among other things, had allowed the authorities to detain people in security centres without penal sanctions or loss of their social and economic rights. The state of emergency had also authorized the imposition of a curfew, the prohibition of meetings that posed a threat to public order and the dissolution of elected assemblies when legal action by the authorities was no longer possible or had been frustrated. In that connection, 11 administrative internment centres had been opened, holding a total of 6,786 detainees. Detention in such centres could be challenged before a special commission in which members of the administrative authorities and prominent local citizens had been equally represented. Since November 1995, all the administrative internment centres had been closed down and most of the inmates had subsequently gone back to their jobs. Whenever employers had refused to re-employ former inmates, the latter had taken their case to an industrial disputes tribunal and won.

35. The curfew which had been imposed in areas particularly prone to terrorist attack had been lifted throughout Algeria. Freedom of movement was therefore no longer subject to restrictions.

36. Committee members had intimated that abuses had been committed under the pretext of the state of emergency. Yet the fact that five pluralist elections had been held, albeit in very difficult circumstances, under the scrutiny of politicians of all shades of opinion and in the presence of numerous foreign observers, hardly constituted an abuse. Was the closure of the administrative internment centres (legitimate institutions in the context of the state of emergency) an abuse? Was the relaxation of the legal provisions governing the

establishment of associations also an abuse? There were currently 45,000 local associations and 800 national associations in Algeria, and they all made an active contribution to Algerian public life. Sessions of Parliament were open to the public and the national media gave wide coverage to the proceedings. From the low point of 1992-1993, Algeria had now emerged as a vibrant and dynamic country.

37. Mr. HELLAB (Algeria), replying to questions about the protection afforded to citizens by the Algerian authorities, noted that the Government's public security policy since independence had been a matter of strategic choice. In 1962, only 5 per cent of Algerian children had attended school, as against the current figure of 98 per cent. Those figures demonstrated that the Algerian authorities had given consistent preference to building schools rather than police stations or barracks. Furthermore, the current size of the Algerian police force was equivalent to that of the police force of a single city in neighbouring countries.

38. On the topic of possible abuses by the self-defence squads, it should be noted that every time the authorities had armed a citizen, they had prevented a civilian from getting killed. The Government currently had to make a choice: either it could ensure that every single civilian was protected by a policeman, or it could supervise the distribution of weapons to the public. In any event, excesses committed by members of the self-defence squads or the security forces were liable to prosecution. Moreover, excesses committed by members of the security forces were deemed to be an aggravating circumstance and the law prescribed a doubling of the penalty.

39. With reference to the questions about the investigations into the massacres of civilians, it should be stressed that whenever a crime was committed a report was filed and the Procurator of the Republic was informed. When a massacre had taken place, an internal inquiry was launched by the security services to determine whether they had been responsible. In two cases the security forces had intervened, but too late, and those responsible were currently being held in detention. Regarding the Benthala massacre, the security services, and specifically the army, had intervened and seven terrorists had been killed. Three members of the security forces had been killed by a bomb. Armoured vehicles had been used to clear the trails along which the terrorists had escaped. In connection with the massacre at Sidi Youssef, he assured the Committee that there was no barracks in the vicinity; the nearest was situated 5.8 kilometres from the scene of the bloodbath. Generally speaking, the massacres had occurred at night and the terrorists had cut telephone lines to prevent the alarm from being raised quickly.

40. Ms. KARADJA (Algeria) said that, as a member of the National Human Rights Observatory, she was keen to provide further details. First of all, immediately after the massacres of civilians, the Ministry of Solidarity had requested humanitarian aid associations to provide assistance to the survivors. Those associations had thus gathered evidence on the spot and ascertained that, among other things, local people had asked to be allowed to defend themselves against attack. The self-defence squads were thus an expression of the popular will to take up arms to protect their own lives and those of their families, and also to defend their honour. Under supervision,

civilians had been armed by the security forces with the sole purpose of ending the powerlessness to which they had frequently been reduced. In the case of the Benthala massacre, local people had refused the sugar, rice and blankets delivered to them by Red Crescent personnel. Instead they had asked for weapons, since they believed that the danger could come from neighbouring localities or even from within the community itself. Having visited the site of the Sidi Rais massacre in person, she could vouch for the ferocity of the attack, which had been carried out at night by individuals armed mainly with knives. The survivors had testified that most of their aggressors had been present in the settlement prior to the massacre, where they had been at a party. The local inhabitants had therefore suspected nothing and the survivors had repeatedly said that "they had been deceived by people against whom they had never lifted a finger". The Algerian security forces had intervened, contrary to what some people had thought, and two of their number had even been killed by mines.

41. Generally speaking, the Algerian people and State had resisted the murderous rampages of the terrorists. It was widely recognized that the terrorists had established links with foreign organizations and the identity of their financial and logistic backers was well known to geopolitical observers. The terrorist movement had at one point been so powerful that people had thought it would seize power. That was in fact its sole objective: to wield absolute power, without dialogue or negotiation. In 1992, the population had admittedly been sympathetic to the ideology of the Islamic Salvation Front and the misleading message of the Islamic fundamentalists, but upon realizing what lay behind that ideology, public opinion had shifted noticeably. The public had also come to understand that the violence of Islamic groups, which was provocative rather than defensive in nature, was actually an integral part of their philosophy of life. The aim of the terrorist groups was to destroy everything that was intellectually active and dynamic in Algeria. Women were their preferred targets, and it was they who had paid and were continuing to pay the heaviest price. They were indiscriminately targeted by the fundamentalists, regardless of whether or not they wore the veil. Women were resisting, however, and it was they who were currently in the forefront of the struggle against the aggressors. The fact that the Algerian people had not been engulfed in civil war was due to their wisdom and, particularly, the fact that they had stayed strictly within the limits of the law. The Algerian people now had a legitimate State which was capable of protecting them against blind terrorist violence. It was true that the struggle against terrorism occasionally led to certain excesses, but it was impossible to fight such a monster without causing damage. Nevertheless, it was not right that the atrocities committed by the terrorists and the excesses of which certain members of the security forces might be guilty should be placed on the same footing. In that connection, the delegation had made available to the Committee a number of children's drawings of the terrible reality in Algeria. It should also be stressed that, under the Algerian social security system, the State was responsible for supporting the families of slain terrorists who had been the heads of those families. In one case, for example, two little girls whose parents - both armed terrorists - had refused to surrender to law enforcement officers had been saved from

certain death by policemen. The girls were currently in an orphanage, where they were treated in exactly the same way as all the other children. Meanwhile the authorities were searching for members of their extended family in the hope that they would take the girls in.

42. The ordinance on clemency measures had been applied to young people who had yielded to the temptation of Islamic groups but who had not committed any serious offence. The ordinance was a requirement of the law, which the Algerian people considered necessary for their own survival. Although the State could not shirk its obligations or tolerate human rights violations committed by its own agents, and it also had a duty to minimize social divisions and respond to the public desire for peace.

43. Mr. SOUALEM (Algeria), referring to relations between the authorities and NGOs, said that, of all the countries in North Africa and the Middle East, Algeria had allowed the highest number of visits by such organizations since 1992. In 1997, the Government had received representatives of Amnesty International, Human Rights Watch and the International Federation of human Rights. That said, when NGOs classified terrorist groups as armed opposition movements and characterized their crimes as political offences, his Government believed that they had overstepped their mandate. The Government's position had always been clear and should be repeated before the Committee: if NGOs possessed reliable information about excesses which might have been committed by the law enforcement agencies, such information should be forwarded to the Algerian authorities, or else the relevant procedures provided for within the framework of the United Nations should be set in motion.

44. His Government had had a 40-year relationship of cooperation with ICRC. The ICRC chief of delegation for North Africa and the Middle East, who had ambassadorial rank, was moreover regularly received at the appropriate level in Algeria and was in contact with the Algerian Red Crescent. ICRC representatives had visited Algerian prisons and detention centres on several occasions, specifically after the events of October 1989, again in 1990 and after the interruption of the electoral process in 1991. In 1995, the Minister of Justice had officially agreed to allow ICRC representatives to resume their visits to detention centres. In early 1998, a French Swiss television crew had visited prisons and made a film which had subsequently been shown on television in Switzerland.

45. Regarding the disappearance of certain individuals mentioned by members of the Committee, it was the first time that the Algerian authorities had ever heard of two of the cases cited. In two other cases, the maximum duration of police custody - which was theoretically 48 hours but could in exceptional circumstances be extended to 12 days in cases involving subversion and terrorism - had not been exceeded. The individuals concerned had been held in police custody for the purposes of the inquiry and in the light of the sheer size of the country. They had subsequently been released and, if they believed that their rights had been violated, they had the option of seeking redress in the courts, either directly or through their counsel.

46. Regarding the figures cited by Mr. Pocar, he assured the Committee that the cases involved had been fully explained following the publication of the report of the Working Group on Enforced or Involuntary Disappearances

(E/CN.4/1998/43), and that the Government had provided precise details on all the cases which had been brought to its attention, and moreover within a reasonable period. The authorities were nevertheless still prepared to furnish to the competent bodies any other information which might be relevant.

47. Ms. AKEB (Algeria), reverting to the issue of press censorship raised by Ms. Medina Quiroga, said that the press file which her delegation had made available to the Committee had obviously been of interest. That was a sign that the Algerian press was not subject to censorship because, if it was, it would contain nothing of interest. As the Committee members had been able to ascertain, the Algerian press reported on anything and everything, including excesses committed by the authorities. There were more than 20 major daily newspapers in Algeria and over 40 weekly publications. All of them had published articles about the civilian massacres as they had occurred. Journalists had travelled to the scene, interviewed witnesses and compared the statements they had obtained with the official version of events. Generally speaking, despite the state of emergency, the Algerian press enjoyed great freedom, and in that respect it was now regarded as a reliable source by many foreign media. In addition, in 1997 the Secretary-General of the International Federation of Journalists had paid a visit to Algeria, during which he had commended the tone and quality of the Algerian press. The Federation had opened a bureau in Algiers. Between January and June 1998, some 500 foreign journalists had come to Algeria, and the authorities had endeavoured to simplify visa formalities for them and allow them access to the massacre sites. Those journalists had established that the areas targeted for terrorist attack were remote and inaccessible, a fact which complicated the task of the security forces. Finally, it should be remembered that 60 Algerian journalists had refused to remain silent in the face of terrorist violence and had been murdered.

48. The CHAIRPERSON thanked the Algerian delegation for its replies and announced that the Committee would continue its consideration of the second periodic report of Algeria (CCPR/C/101/Add.1) at a subsequent meeting.

The meeting rose at 6 p.m.